NOS. 17,878 & 17,879

In The

UNITED STATES COURT OF APPEALS

For the Sixth Circuit

NO. 17,878

GEORGE RAMSEY, LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis, d/b/a M & T. COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC., EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS,
Plaintiffs-Appellants,

vs.

UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

NO. 17,879

TENNESSEE PRODUCTS AND CHEMICAL CORPORATION,
Plaintiff-Appellant,

vs.

UNITED MINE WORKERS OF AMERICA,
Defendant-Appellee.

Appeals from Final Judgments of the United States District Court, Eastern District of Tennessee, Southern Division

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[3868]

JOSEPH P. BRENNAN,

a witness called at the instance of the defendant, being fi
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q Would you give your name and your address to the Court, please?

A My name is Joseph P. Brennan; my address is 3522 Olympic Street, Silver Spring, Maryland.

Q Mr. Brennan, are you employed by the United Mine Workers of America?

A Yes, sir, I am.

Q What is your employment?

A My job is assistant to the director of the Resear and Marketing Department of the United Mine Workers o America.

Q How long have you held that position?

A I have been in that position since July of 1957.

Q Would you give the Court and the recor
[3869] a brief background of your educational qualifica tions and your experience?

A Yes, sir. I have a degree in economics from t University of Notre Dame, graduating in 1957, and I have a Master's degree in business administration from the American University in Washington, D. C., in nineteen sixty—in June of 1965.

Q Would you describe your duties in the Marketing and Research Department of the Mine Workers?

A The Research and Marketing Department of the Mine Workers has two primary tasks. The first is to ai in the holding and expansion of the markets for anthracite and bituminous coal.

The second major function is activity to develop new markets for both anthracite and bituminous coal.

Q Now, Mr. Brennan, do you have access to the records of the proceedings of the policy committee and of the convention proceedings of the United Mine Workers?

A Yes, sir, I do.

Q Have you at any time been requested to go through these proceedings with reference to the position and policy of the United Mine Workers as reflected in the proceedings of the convention?

A Yes, sir, I have.

[3870] Q How far back have you gone into those proceedings?

A I went back to 1890, although the first material that was actually taken was 1899.

Q Now, were you asked to extract from these proceedings certain excerpts?

A Yes, sir.

Q And do you have them with you?

A Yes, sir.

Q Now, did you bring with you copies of the proceedings from which these extracts are made?

A Yes, sir, I have.

Q Are they here in court now?

A Yes, sir.

* * *

[3874] Q Mr. Brennan, from your examination of the proceedings and the constitution, the constitution of the United Mine Workers of America, does it establish the objectives of the union?

A Yes, sir.

Q Will you read from page 3 the objectives of the union from this exhibit, D370?

A On page 3, Article II. "Objects. First. To

unite in one organization, regardless of creed, color or nationality, all workers eligible for membership, employed in and around coal mines, coal washeries, coal processing plants, coke ovens, and in such other industries as may be designated and approved by the international executive board, on the American continent."

Q Are there other sections of that constitution? You can refer to your excerpts there. Are there other sections of that constitution which bears upon this point?

A Yes, sir. The section dealing with the third object of the United Mine Workers on page 4, which reads:

"To demand that not more than six hours from bank to bank in each 24 hours and not more than five days per week shall be worked by members of our organi-
[3875] zation."

And also the fourth object on page 4, also:

"To strive for a minimum wage scale for all members of our union."

Q Now, Mr. Brennan, from your examination of these records, does the clauses that you read from that constitution, do they run back to 1890?

A The earliest that we have been able to find of the first one to unite in one organization, we can trace it to 1912. The minimum wage section we can also trace to 1912.

In 1920 they changed the original one from eight hours, which was the original demand, to six hours.

Q Now, referring to your excerpts, were there certain statements made in the report of President Ratchford to the United Mine Workers' convention in January of 1899?

A Yes, sir. President Ratchford said in part——

Q (Interposing) Are you quoting now?

A Yes, sir, I am quoting.

Q From the 1890 convention?

A From the 1899 convention on page 24 of the proceedings:

"The agreement quoted advanced your wages generally about 18 per cent and reduced the hours of labor almost in the same ratio; it reduced the size of screens to the smallest prevailing standard and to a very great extent abolished them entirely. It equalized the wages [3876] of the different classes of labor and made conditions uniform in all of the fields covered. It re-established healthy and mutual relations between employers and employees. It gave our organization place and prestige in the business and industrial circles of the country and banded together in unity and fraternity a greater number of miners, covering a greater number of states, than was ever known at any previous time in our history."

At the same convention there is a record of a resolution adopted at a meeting of the scale committee in Chicago in 1898, which states:

"Resolved, —

Q (Interposing) Just a minute, so counsel can follow you. Will you tell what page that is?

A That's at page 22.

Q Wait until he finds that. Go ahead.

A Page 22. "Resolved, that two operators and two miners from each state meet in Columbus, Ohio, on the second Tuesday in March (or March 8th) 1898 at the Chittenden Hotel, to formulate a uniform day work scale, based upon the districts upon which the mining prices are based."

Q Now, did Tom Lewis, a former president and vice-president of the Mine Workers, while he was holding the office of vice-president, did he speak for that matter and, if so, at what time and what place?

[3877] A Yes, sir. Tom Lewis, the former president and vice-president of the union spoke to this question and the convention of 1905.

Q At what page?

A This is in the 1905 convention proceedings, on page 38, Mr. Lewis said, "With reference to the day wage scale, the records of the previous year show that the principal argument in favor of the day wage scale agreed to at that time was that they should have the same scale of wages for day men in the southwest as in the eastern mining states. So far as argument was concerned, it was impossible to refute the records. It was evident that at the same day wage scale should exist in all of the mining districts of the previous year and a uniform scale of wages was agreed to practically on the strength of that argument. It could not consistently be argued that it should be continued to exist another year."

Q Now, in the 1910 ——

A (Interposing) Page 38, sir.

Q In the 1910 convention did the committee on officers' reports make a recommendation as to district agreements and, if so, on what page?

A Yes, sir. The committee on officers' reports recommended non-concurrence in a resolution dealing with district agreements.

[3878] Q At what page?

A This is to be found on page 612 in the 1910 convention, and the committee said, "Your committee non-concurs in the recommendation, believing it both unwise and inadvisable to declare in favor of such a policy previous to meeting the operators, and recommends against any sectional or state settlements, believing that a general settlement should be made so as to provide the same relative increase and uniform condition in all the districts."

Q What about the 1909 convention?

A The 1909 convention?

Q Yes.

A I don't have the quotation. I have a quotation from the 1910 dealing with the request that was—I have a quotation.

Q Just what do you read from?

A Yes, it is from the 1910 convention proceedings, but it deals with the request made in 1909 by the coal operators of central Pennsylvania, who were seeking relief from their contract.

Q Would you read that?

A Yes, sir.

Q What page does that occur on?

A This is on page 78 and the response was made by the officers of the United Mine Workers and

[3879] I quote, "Any modification of the contract in your district would be followed by modification of the wage agreement in every section of the United States, even in those districts that are called non-union, and for this reason you would not secure the relief you asked for in modifying the wage contract."

"Any deviation from this rule, which has become the established and fixed policy of our organization, would utterly demoralize our joint forces and both divergent interests, namely, operators and miners, would suffer in consequence. Hence, we sincerely trust that the operators of central Pennsylvania will look at this matter from the same standpoint and endeavor to operate their mines for the residue of the scale period under the terms of the agreement now in force."

Q Is there further quotes from that?

A No, sir, that is the end of that.

Q All right. What is the next one?

A In the 1900 convention, President John Mitchell

of the United Mine Workers discussed a proposal by the Hocking Valley operators to secure a lower wage rate, and he said in part in discussing this proposal ——

Q (Interposing) On what page?

A This would be the 1900 proceedings, page 16.

Q All right.

A "And our organization would agree to
[3880] make the mining rate more favorable to the Hocking Valley at our next convention. All of these propositions were refused by us; the first two because we considered them internal differences that should be settled after the scale was signed; the last because we had neither the inclination nor authority to commit the organization to any rate other than that provided for in the joint convention."

Q All right. Now, what is the next excerpt?

A The next convention is a scale committee resolution adopted at the convention of 1914, this is on page 1092 of the 1914 proceedings in volume 2.

Q Would you read that, please?

A It says in part, "A uniform work-day and wage scale for all classes of outside and inside day labor."

Chairman Bitner at the same convention spoke on this question of a uniform day scale.

Q Does it show what position Mr. Bitner held?

A Mr. Bitner was chairman of the scale committee at the convention, and he said, and I quote, this is on page 1103, "A uniform work-day and wage scale means a uniform scale for all classes of labor, as specified, all class of the same labor in the central competitive field."

In that same convention, 1914, and I will make this available, I have to read from it, there was an interesting discussion of this question by President White.

[3881] MR. ROWNTREE: Was this the central competitive field they are talking about?

THE WITNESS: Yes, sir. This is President White of the United Mine Workers speaking, "It seems like a repetition to explain these mines for uniformity. I understand the aim and purpose of the committee's recommendation—and it is in harmony with my own suggestion when I appeared before the committee—is to establish uniformity in wages and hours for the various classes and lines of labor throughout the competitive field, is that correct?"

Chairman Bitner responded, "That is correct."

President White went on, "For the benefit of our Kentucky brothers, I will say that if the second clause is adopted the inequalities complained of, the low day wage scale prevailing in western Kentucky, would be a proper subject, when we finally dispose of the basing questions in the central competitive field, for them to take up if we secure the right—and I understand that is one of the burning questions the miners want adjusted in this convention—that would allow the district to take up their internal troubles for adjustment. If that is secured in the central competitive field, it will give the outlying districts the right to give these inequalities they complain of a subject to readjustment in their respective localities."

President White went on to say, "I do not
[3882] understand that this wage demand section to change the difference existing between the laborer and the head trackman, but it will make the wages uniform for various classes of labor. This convention many years ago settled that question and adjusted it so far as the difference between the timberman and his helper and the trackman and his helper is concerned. It seeks to make uniform the hours and wages of the various classes of labor in the central competitive field."

Chairman Bitner in the discussion said, "The understanding is just as President White has explained. We demand a uniform wage for all classes of labor, that is,

a uniform day wage throughout the central competitive field for track layers, and the same wage for drivers, and a uniform wage for track layers' helpers, that is, the track layers' helpers throughout the four competitive states will receive the same wages."

President White went on to say, "It has been stated here repeatedly that the clause under consideration contemplates that these various classes of labor shall be paid the same throughout the central competitive field, namely, that all drivers in the central competitive field shall receive the same wage, all top men throughout the central competitive field shall be paid the same wage, al common inside labor in the central competitive field shal have a uniform wage; but it does not contemplat [3883] that we would stand for a demand to bring the common laborer up to the wages his head track layer or head timberman enjoys."

This is available.

Q All right. What is the next excerpt that you hav

THE COURT: What year was this?

THE WITNESS: This is 1914, your Honor.

A The next excerpt is taken from the 1927 convention proceedings, it is a speech by President John L. Lew on page 71 and volume 1, and it says in part, "Your officers have been and are now of the opinion that the proble of the bituminous industry will not be solved merely by the practice of paying less wages to the men employed therein. It has been repeatedly demonstrated that in times of over-production and depressed markets, the non union coal operators having the power will reduce wages to any point necessary to give them a margin of advantag over the union producers. It is an economic fact that the Mine Worker in the central competitive field and the outlying organized bituminous territory lives under a social standard that will not permit him to work for wage

as pitifully low and that entails such a degree of economic degradation as prevails in the miserable coal camps of southern West Virginia and southeastern Kentucky, and elsewhere in the non-union area. For this reason, the union miner cannot agree to the acceptance of a
[3884] wage principle which will permit his annual earnings and his living standards to be determined by the hungriest unfortunates whom the non-union operators can employ."

Q What is the next excerpt you have, Mr. Brennan?

A The next convention proceedings from which a quotation is taken is 1932. This quotation is taken from the officers' reports on page 50. This, Counselor, I have available here.

MR. ROWNTREE: I wonder if we might not read this whole statement on the Jacksonville Agreement with respect to the convention of 1927? It is apparently developing into a matter of some significance.

MR. COMBS: All right.

MR. ROWNTREE: I don't know what it is.

MR. COMBS: You are taking a chance.

MR. ROWNTREE: I might be sticking my neck out, but I would like to know what happened.

MR. COMBS: We have no objection if you want my witness to read it, he will go ahead, or if you want to read it, go ahead.

MR. ROWNTREE: Would it be agreeable with your Honor?

THE COURT: Well, without knowing what it is, without counsel knowing what it is in it, it would appear to the Court that at the next recess you consider
[3885] what portion of it, if you want all of it in, all right, but I think counsel should read it first and not read it for the first time as it is read into the record.

MR. ROWNTREE: We might eliminate a lot of words that way.

BY MR. COMBS:

Q All right. Would you go ahead, Mr. Brennan?

A Yes, sir, the 1932 convention, the officers' report on page 50, says in part, and I quote, "The constant reductions of wages that have lately taken place have afforded no relief to capital, and indeed, have but tended to increase its embarrassments. Any reduction in labor in any coalfield usually necessitates and generate a corresponding reduction in every other competitive coal field. If the price of labor in the United States was uniformly raised to the standard of three years ago and the employers of labor would occupy towards each other the same relative position in point of competition as at presen such an advance would prove beneficial to their interests, as it would materially help to remove the present general discontent of the miners in their employment."

Q All right. What is your next excerpt and on what page?

A The next is also taken from 1932 convention proceedings, volume 2, page 721. It is a report
[3886] of the scale committee to the convention and it says in part, "In keeping with a number of resolutions presented, the committee further recommends that the international officers, in cooperation with the various district officers and scale committees, use every possible influence, consistent with circumstances, to bring about a more satisfactory adjustment in wage rates between classes of labor in and around the coal mines. We also recommend to each district organization that every possibl effort be made in their joint negotiations to conclude agreements which will contemplate uniformity of wages and to have all contracts expire at the same time. The committee further recommends that the various district officers

and scale committees make every possible effort in negotiating their joint agreements, to protect our members and prevent discrimination on account of their age and other unfair and unjust requirements of employment, such as is complained of in these resolutions."

Q Go ahead.

A Also in the 1932 proceedings, President Lewis accepted the mandate of the convention and pledged to bring all of the operators together for the purpose of stabilizing the wage structure in the coal industry in these words, and I quote, "You will note in the report——"

Q (Interposing) Did you give the page?

A I am sorry, it is page 724, volume 2.

[3887] "You will note in the report of the committee that the scale committee recommends that the convention instruct the officers of the international organization to again ask the President of the United States to call a conference for the purpose of stabilizing the wage structure of the bituminous industry, either upon a national basis or some readjusted basis of territorial grouping representing the basic tonnage production of the country. That becomes a declaration of policy, and under that policy the district organizations are given the utmost leeway either to negotiate separately if they must or jointly and together if they can. The very idea that Delegate Lark has in his mind, developed by his local union, is incorporated in principle in the report of the scale committee. We have tried to safeguard every proper consideration of this matter, but you will understand, gentlemen, that the fundamental defect in the joint wage negotiating structure of the coal industry is the disorganization among the coal operators and their refusal to act in concert with the United Mine Workers of America to stabilize the greatest factor in the cost of the industry, namely, the labor cost."

Q The next one, please.

A At the 1934 convention the scale committee discussed wage differentials in these words, and this is taken from the 1934 convention proceedings,
[3888] Volume 2, pages 547 and 548, and I quote:

"The disposition of the vexing question of inequitable differentials is a matter which is being given consideration by the federal government. The Bituminou Coal Code requires the National Recovery Administratior to make a thorough and complete study of this entire subject matter and report the result of its finding to the February conference. Keen interest is being manifested by the organization in the proper adjudication of this problem. The scale committee recommends that the representatives of the United Mine Workers of America who are to negotiate with the operators beginning February 12 press the need of an early solution of this question. We had an appreciation of its perplexities, the subject in min being more or less correlated to the question of freight rates and prices. It is the hope of your scale committee that the government, in the light of the facts which it has been able to ascertain, will recommend the abolition of inequitable differentials and establish at the same time, through the properly designated code authorities, a price structure which will enable the maintenance of uniform wage levels by and between districts."

At the same convention the officers' report said, on pages 29 through 33, and I quote:

"Union contracts, with standard wages, standard charg for rent and mine supplies, and standard labor
[3889] conditions, are the best insurance against the meanest of unfair practices, namely, the chiseling of production costs by exploiting labor."

"Your representatives, in all of the negotiations with the bituminous operators, and representatives of government in 1933, continuously urged the elimination of region

wage differentials. We do not believe there is any justification for arbitrary differentials in the wages of miners."

Q Your next excerpt, please.

A The next excerpt is taken from the 1936 convention, Volume 1, pages 20 to 23. This is the section on officers' report and it says and I quote:

"Inequality in rates, both in and between districts, has been a subject matter of major consideration in almost every joint conference of Mine Workers and operators for the past 50 years. . . The North-South differential question, the inter-district differential problem, and the finding of a proper solution for intra-district differential inequalities were matters that consumed a considerable portion of the time of the two last Appalachian joint conferences."

"The 1934 Appalachian joint conference created a North-South differential commission, but the commission dissolved after 6-months' work without producing [3890] a solution. The 1935 Appalachian joint conference appointed a joint sub-scale committee to study the problem."

The scale committee in the 1936 convention adopted the following report, and this is on page 505 of the convention proceedings:

"Your committee further recommends, that in order to broaden the scope of the joint wage scale conference, an effort shall be made by the officers of the International Union to secure a national wage scale meeting."

President Lewis at the same convention in 1936, Volume 2, page 508, discussed the request for the elimination of differentials in these words:

"The United Mine Workers of America could secure an adjustment of these differentials in all districts and between districts if he were willing to adjust them down-

ward and reduce the high districts to the level of the low districts. But that is not our idea of adjusting differentials and your organization has resisted the importunities of the operators on that question. We hope in time, as continuing advances in wages are made, to equalize these differentials within and between districts."

Q All right. What is your next excerpt?

A At the 1938 convention, pages 435 and 436, Vice-President Phillip Murray, United Mine Workers, said in part, and I quote:

[3891] "In 1933 when the first Appalachian wage scale conference was convened in the city of Washington shortly after the passage of the National Recovery Act, it was discovered during the period of the negotiations that the differential between the daily North and South wage scale ranged anywhere from $1 to $2 per day. It was also discovered during the period of these negotiations that racial discrimination was exercised against Negro workers in the South. Many of these southern districts had never been privileged to enjoy the protection of the organization heretofore. So the United Mine Workers of America, in the early conferences, beginning in 1930, sought the elimination of those discriminating differentials and fought during those conferences to elevate the standard of the Mine Workers of the South, so that a more equitable competitive relationship might be established between the mining districts of the South and northern mining districts.

"Since our first conferences in 1933 we have reduced the differentials in many southern districts from the then existing differentials of about $2 per day, until the differentials in districts south of the Ohio River, such as West Virginia, Kentucky and Tennessee, have been reduced to 40 cents per day, due consideration being given in each situation to what the establishment of a just, equitable differential might mean not only to the industry itself, but

[3892] in work opportunities to the men dependent upon the industry. Considerable headway has been made by your negotiation committee, by your national policy committee, by your Appalachian wage scale committee in eliminating that particular evil."

At the 1940 convention the scale committee adopted the following report in part, and I quote, and this would be in the 1940 proceedings in Volume 1, page 462:

"One. The international executive officer shall attempt to arrange a national joint wage scale meeting with the bituminous coal operators of the United States. In the event such national joint wage scale meeting cannot be arranged, then the procedure with reference to the convening of an Appalachian joint wage scale meeting shall be followed."

Another recommendation of the committee said in part, and I quote:

"The wage scale committee shall also endeavor to secure the abolition of all discriminatory differentials in and between districts."

The last quotation may be found on page 463.

MR. ROWNTREE: What year?

THE WITNESS: This is 1940, sir.

Vice-President Murray, commenting on the attempts to eliminate differentials in the 1940 convention had this to say, and this is on page 462:

[3893] "The first proposal there suggests that, in addition to the districts comprising the Appalachian coal-fields, the coal operators of all other districts be invited to participate with the Appalachian operators and our own national wage scale committee in a national wage scale conference. That, as you must known, has been the ambition of the International Union for many, many years. Each international convention of the United Mine Workers of America usually resorts

to the adoption of a policy requesting the officers of our International Union to try to get a national wage scale conference. In the event such a national wage scale meeting cannot be arranged, then the procedure with reference to the convening of the Appalachian joint wage scale meeting shall be followed. But the basis for the perfection of agreements in all outlying districts or all such districts that may not be privileged to participate in the Appalachian joint wage scale conference shall be the agreement that may be arrived at in that conference.

Mr. Murray, at the same convention in 1940, said, and I will quote ——

Q (Interposing) On what page?

A This would be on page ——

Q (Interposing) Page 463?

A 463, yes, sir.

Q Go ahead.

A "Since the year 1933, in the course of
[3894] each and every one of our Appalachian wage scale meetings, the Mine Workers' scale committee has constantly pressed the need for the Appalachian of all discriminatory or inequitable wage scale differentials, both as to tonnage rates and day labor rates. Prior to the inception of the Appalachian wage scale conference, the differentials between the northern districts and the southern districts on the basis of day-wage rates amounted in some instances to as much as $2.50 per day, the southern men being paid $2.50 in many instances less than men who performed the same kind of labor in the northern districts.

"With the establishment of the joint Appalachian wage scale conference, which brought into the Appalachian meeting the southern operators, your wage scale committee succeeded in lowering the differential between the North and the South from $2.50 to a fixed amount of 40

cents per day.

"Prior to the inception of the Appalachian wage scale conference there were discriminatory internal and district differentials prevailing. For example, in many districts in the South the practice followed by the coal operators with reference to the payment of day-wage men resulted in this, that the colored workers were paid from 25 to 60 cents per day less than the white workers, while the colored workers were doing exactly the same kind of labor. The Appalachian joint wage scale conference, at its first 1933 meeting succeeded in securing the abolition [3895] of that vicious, discriminatory differential."

The international officers' report to the 1942 convention contains the section dealing with the demands made to the operators at that time, this is in the 1942 proceedings, Volume 1, page 41, it states in part, and I quote:

"Existing inequitable differentials within and between districts shall be eliminated, including loading rates, mechanical day-wage rates, and North-South differentials, and all other factors operating to maintain and widen such differentials and inequalities."

At the 1942 constitutional convention, Mr. Lewis said, commenting on this in part, this will be found on page 33 and 34:

"The Mine Workers had learned through the years that the coal industry was preyed upon by the great coal-consuming interests of this country, and it was characteristic and traditional on the part of the coal operators of the country to permit themselves to be exploited by those large consuming interests to contract the sale of the coal below the cost of production and then ask the coal miners of this country to make up the difference by taking a decrease in their wages. And as the price of coal kept getting lower and lower in the face of the intense buying competi-

tion of the industry the operators of the country, unabashed continued to ask for more and more of a reduction
[3896] a lower and lower wage scale, which resulted in 1927 in the coal operators of the central competitive field coldbloodedly demanding in joint conference that the wages in all the organized sections of the coal industry should be continuously competitive with the wages paid by the non-union coal operators of this country.

"What did that mean? That meant that in Alabama, for instance, where some coal operators had forced wages down to as low as 90 cents a day for a 10- and 12-hour day, that the operators of the Southern Appalachian would also have to have a 90-cent-a-day wage on a 10-hour basis of operation; that the operators of Virginia, West Virginia and Kentucky would have to have that wage to enable them to compete, and that the operators of Indiana, Illinois, Pennsylvania and other coal-producing states would have to meet that competition and have an equivalent wage rate. In other words, that philosophy meant the continuous competitive wage scale with the compensation of the coal miner of this country and his living standards in the community where he dwelt would be measured by the minimum debasement inflicted upon our people in the most oppressed coal camp of America, where the people were more helpless because they had to live under conditions wherein they could not call their souls their own and where they had no privilege of free action and where they had
[3897] no rights as guaranteed by the constitution and the laws of the various states."

The 1944 convention contains a recommendation by the policy committee. This may be found on page 94. It recommends in part, and I quote:

"That every effort be made to arrange a national joint wage scale meeting with the bituminous coal operators

of the United States for the purpose of working out a national agreement on a nation-wide basis so that conferences may be facilitated and speedy conclusions arrived at."

The same convention contains the reason that this was sought, and I quote also from the policy committee:

"The economic and interdependent competitive relationship of the wage structure of the several coal-producing districts is generally recognized. The Mine Workers have long believed that the collective bargaining problems of the industry could be more adequately handled through the medium of the national joint wage conference. We venture, therefore, to inquire whether the interests you officially represent would be willing to join with the United Mine Workers of America in enlarging the Appalachian conference so as to include representatives of the operators and Mine Workers of all the bituminous fields of the United States."

The 1944 convention, the scale committee
[3898] endorsed two policies in part, and I quote, this is on page 515:

"Two. The wage agreement in the bituminous coal districts approved December 17, 1943, and expiring March 31, 1945, was the first basic national wage agreement ever consummated by the United Mine Workers of America. This was the goal that the founders of our union sought from the beginning of our union back to the year 1890. Therefore, we declare for the continuation and improvement, through the medium of collective bargaining of a basic national wage agreement for the bituminous coal industry.

"Four. The general wage scale committee, created by the national policy committee, shall propose and endeavor to secure the abolition of all discriminatory tonnage or day-wage differentials existing within and between districts

and to strive for uniformity of rates by classifications for work performed on mechanized units and proper differentials between the various classifications of such labor."

The secretary of the scale committee went on to explain, this is on page 518, and I quote:

"The fourth recommendation of the committee deals with all discriminatory tonnage or day-wage differentials existing in or between districts. On that question one of the intricate problems in the industry, as affecting the Mine Workers, has been the tonnage and day-wage differentials, and I think on that particular problem [3899] in the last four years we have made more progress in arriving at uniform rates of pay in all the districts than we have ever made in a like period in the history of the industry. The North-South differential on day wages and other differentials had been eliminated by reason of arriving at uniform rates of pay in all of the districts in respect to mechanized mining and loading. There are a number of differentials existing within and between districts on tonnage rates which should be eliminated. But the trend in the industry to mechanized mining will bring about a greater degree of payment for wages based upon day wages than was possible under the other systems of mining, and the one thing the committee recommends on this proposition is that the policy committee study the question of these differentials for the purpose of eliminating and then arriving at uniform tonnage, day-wage rates in the national basic contract for all districts alike.

"Now, we have some particular problems in that respect. We have some districts in the United States outside of the Appalachian area where the rates have been made uniform on day wages. We have some districts, due to economic and competitive conditions of other fuels, where those

districts today have wage rates below the Appalachian rates, and then we have other districts in the Far West that have higher rates than those which prevail in the Appalachian region, and this recommendation of the Committee is to study those problems for the purpose
[3900] of arriving at a uniformity in tonnage and day-wage rates in all districts."

In the 1946 convention, on page 161, Vice-President O'Leary, vice-president of the United Mine Workers, said in part, and I quote:

"As far as differentials are concerned, I don't know why these differentials exist. The operators have never pointed out any reason why these differentials should exist within the district and between the districts. They have never pointed out that because they are unable to, because digging a ton of coal in a 6- or 7-foot vein is a lower rate than digging it in a 5-foot vein. Can you get that? The attitude of the operators on the differentials in and between the districts reminds me of a story told by one of the policy committee members here, when he said that the birth of a boy cost $25 and the birth of a girl only $20. You ask them the reason, and there isn't any reason, except that they have always done it—that is the answer you get from the operators on this one particular question—not because there is any merit in their argument, but because it always was that way and they don't want any changes now. It is just too bad that the five or six hundred coal men who are over in Cleveland could not have heard some of the records presented here by the boys who made the investigation."

At the 1948 convention the national policy
[3901] committee reiterated the union's determination to maintain the national agreement by unanimously adopting the following resolution. This may be found in

the 1948 proceedings, Volume 1, page 60, and I quote the resolution:

"The policy committee reiterates the decision of the International convention for a national conference and a national contract. This should be the objective of both miners and operators. In view of that efforts are now being made to bring this about, it is the judgment of the policy committee that our scale committee be authorized in their discretion, to determine upon the basis of tonnag reported on May 15th in favor of a national conference, whether or not the facts warrant the organization of the conference on a national basis, in principle, and negotiat of a national agreement."

In 1948, the 1948 convention on page 121, the scale committee adopted the following resolution, excuse me, this is on page 441:

"Interests unfriendly to our organization have repeatedly opposed our position concerning the establishment of a National Bituminous Coal Wage Agreement; and at conferences relating to recent wage agreements, the bituminous coal operators expressed divergent views which were at variance with the policies of the United Mine Workers on this question. Consequently, in consideration of these facts, the declaration for a
[3902] national policy committee to negotiate an agreement which is national in character is reaffirmed by this convention."

The scale committee in 1952 made the same reaffirmation, and you will find this in Volume 1 of the '52 proceedings, page 531, and I quote:

"The concerted opposition of our numerous enemies in both the economic and political fields to industry-wide agreements whereunder we have achieved remarkable victories in recent years, is the most effective argument

for continuation of our established policy on this question. To provide sufficient mobility for our organization to maneuver quickly in connection with joint conferences for satisfactory contracts in conformity with established collective bargaining processes, we recommend reaffirmation of the declaration for a national policy committee to negotiate a National Bituminous Coal Wage Agreement to cover the whole bituminous coal industry."

In the 1956 convention, this will be found on page 131, Mr. Lewis made the following comment at a press conference, which is published in the convention proceedings. In answer to a question he said, and I quote:

"Well, if you trying to ask me if I will accept any less, I would very frankly say that I wouldn't. If you are asking me whether I would accept any more from another
[3903] negotiating group I would say yes. I would hope to induce them to be more broadminded than Mr. Moses' group."

There are the lists of the quotations.

MR. ROWNTREE: May I ask with respect to that last quotation, was that with reference to the union's purpose and intent of other companies and associations other than those represented by the Bituminous Coal Operators' Association?

THE COURT: Page 131 of the 1956 convention proceedings?

MR. ROWNTREE: I think it is clear on the record, your Honor.

MR. COMBS: The question was whether or not this contract applied, the pattern of the industry, is what it boils down to.

MR. ROWNTREE: I beg your pardon. What did you say?

MR. COMBS: I just said that it involves the question

of whether or not this contract would be sort of blanket. He says, "industry-wide," unless he could get more from somebody else.

Are you satisfied with that, Counsel?

MR. ROWNTREE: Yes.

BY MR. COMBS:

Q Mr. Brennan, I hand to you an exhibit [3904] that you have prepared by direction. Would you describe that exhibit, what it is?

A This exhibit contains a comparison of the increase in hourly earnings between bituminous coal mining and other industries for the period 1951 and 1963.

Q What is the source of that exhibit?

A The source of that exhibit is Exhibit No. P357, which is the 1964 bituminous coal data.

MR. COMBS: If the Court please, I offer that as an exhibit to this witness' testimony.

THE COURT: Exhibit 371.

(The comparison referred to above was marked D371 and received in evidence.)

BY MR. COMBS:

Q Would you describe the exhibit, what is the first column after the heading?

A The first column contains the industrial classification which we will compare with bituminous coal mining. Do you want me to read the classifications?

Q First describe the columns, that contains the industry?

A The industry, yes.

Q What is the second column?

A The second column contains the absolute increase in hourly earnings in the various industries outlined in the first column.

[3905] Q What do you mean by "absolute increase"?

A The actual dollar amount, the average hourly wage increased between the years 1951 and 1964.

Q What is the next column?

A The next column shows the percentage increase in the average hourly earnings for the industries outlined in the first column.

Q Now, would you take the columns and read across, commencing with bituminous coal mining and describe this exhibit?

A Yes, sir. In bituminous coal mining the absolute increase in hourly earnings between 1951 and 1964 was $1.16, that was a 54 per cent increase.

In quarrying, non-metallic mining, the absolute increase was $1.08.

MR. COMBS: Would the Court like to have a copy of this to follow?

THE COURT: No, I can understand it.

A The percentage increase was 74 per cent.

In metal mining the absolute increase was $1.26, the percentage increase was 74 per cent.

In petroleum and natural gas production, the absolute increase was $1.10, the percentage increase was 59 per cent.

[3906] All manufacturing, the increase was 97 cents, the percentage increase was 62 per cent.

In blast furnaces and basic steel products the absolute increase was $1.46, the percentage increase was 76 per cent.

THE COURT: What was the last item?

THE WITNESS: Blast furnaces and basic steel products. The two figures?

THE COURT: Yes.

A Lumber and wood products (except furniture), the absolute increase was 73 cents, the percentage increase was 52 per cent.

In ship and boat building, the absolute increase was $1.27, the percentage increase was 73 per cent.

In motor vehicles and equipment the absolute increase was $1.30, the percentage increase was 68 per cent.

MR. COMBS: I offer that as an exhibit. I wonder if I could have Exhibit No. 357?

BY MR. COMBS:

Q Mr. Brennan, I show you a paper entitled or pamphlet entitled "1964 Bituminous Coal Data," is it Exhibit No. 357, it has been introduced by the plaintiffs in this case. Would you turn to page 104 of this exhibit?

A Yes, sir.

Q Do you have the page?

[3907] A Yes, sir.

Q Would you explain what this page contain

A This is a table showing net income and federal income tax of corporations engaged in bituminous coal mining, 1917 to 1962. The source of this exhibit, the source of this table is "Statistics of Income, U. S. Treasury Department, Internal Revenue Service."

Q What does the fifth column in that table show?

A The fifth column shows "Net Income for Companie Showing an Income between 1917 and 1962."

Q What does the sixth column show?

A The sixth column shows the deficit for the companies showing a loss for 1917 to 1962.

Q What does the seventh column show?

A The seventh column shows the net income or loss for the company in the bituminous coal industry for 1917 to 1962.

Q Now, for the year 1956, what was the relative

position and net income of companies showing income in comparison with the four proceeding years and the six subsequent years?

A In 1956 companies showing income were considerably higher than those for the four preceding years and the six subsequent years. Would you like me to read the income?

Q Yes, I would.

[3908] A In 1952 the net income for companies showing income was $88,263,000.

In 1953 the net income was $72,747,000.

In 1954 the net income was $47,180,000.

In 1955 the net income was $87,399,000.

In 1956 the net income was $135,363,000.

In 1957 the net income was $114,188,000.

In 1958 the net income was $72,584,000.

In 1959 the net income was $67,970,000.

In 1960 the net income was $70,080,000.

In 1961 the net income was $86,094,000.

In 1962, and this is a preliminary figure, the net income was $66,825,000.

Q According to that table, would you say that 1956 was a typical year?

A Not according to this table, no, sir.

Q For the year 1956, what was the relative position of the deficit of companies showing a loss in comparison with the four preceding years and the six subsequent years?

A In 1956 the deficit for companies showing a loss was lower than it was for the four preceding and six subsequent years. Would you like for me to read those figures?

Q Yes, would you read those, please?

A In 1952 the loss was $19,069,000.

In 1953 the loss was $31,192,000.

[3909] In 1954 the loss was $31,933,000.

In 1955 the loss was $19,982,000.
In 1956 the loss was $16,088,000.
In 1957 the loss was $25,386,000.
In 1958 the loss was $25,792,000.
In 1959 it was $37,398,000.
In 1960 it was $39,789,000.
In 1961 it was $29,061,000.
In 1962, the preliminary figure was $33,706,000.

MR. COMBS: You may cross-examine.

MR. WALKER: Your Honor, may we have, say, about a 15- or 20-minute recess?

MR. COMBS: I am sorry.

Q Mr. Brennan, I show you a pamphlet. Would you examine that and tell the Court what it is?

A This is a schedule showing the average hourly earnings in coal mining and selected industries from 1950 through 1964.

Q Did I ask you to prepare this information?

A Yes, sir.

Q From what source did you take it?

A This is taken from the book entitled "Employment and Earning Statistics for the United States, 1909-64," published by the Bureau of Labor Statistics, U. S. Department of Labor.

Q Now, on the first page would you tell
[3910] the columns and describe this pamphlet across the page by columns?

A The first column contains the years listed from '50 through '64; the second column contains the average hourly earnings in the bituminous coal mining; the third column contains average hourly earnings in the motor vehicles and equipment industry; the fourth column contains blast furnace and basic steel products.

Q The fourth column?

A That would be the fourth. The year and three industries.

Q All right. Reading across would you take and read into the record the columns across beginning with 1950?

A 1950, average hourly earnings in bituminous coal mining was $1.944; motor vehicles and equipment, the average hourly earnings were $1.778; in blast furnace and basic steel products the average hourly earnings, $1.703.

In 1951 the bituminous coal mining average hourly earnings, $2.14; motor vehicles and equipment, $1.91; blast furnace and basic steel products, $1.90.

In 1952, average hourly earnings, bituminous coal mining, $2.22; motor vehicles and equipment, $2.05; blast furnace and basic steel products $2.00.

1953, bituminous coal mining average hourly earnings, $2.40; motor vehicles and equipment, $2.14;
[3911] blast furnace and basic steel products, $2.18.

1954, bituminous coal mining average hourly earnings, $2.40; motor vehicles and equipment, $2.20; blast furnace and basic steel products, $2.22.

1955, bituminous coal mining average hourly earnings, $2.47; motor vehicles and equipment, $2.29; blast furnace and basic steel products, $2.39.

1956, bituminous coal mining, $2.72; motor vehicles and equipment, $2.35; blast furnace and basic steel products, $2.54.

1957, average hourly earnings, bituminous coal mining, $2.92; motor vehicles and equipment, $2.46; blast furnace and basic steel products, $2.70.

1958, bituminous coal mining, $2.93; motor vehicles and equipment, $2.55; blast furnace and basic steel products, $2.88.

1959, bituminous coal mining, $3.11; motor vehicles and equipment, $2.71; blast furnace and basic steel products, $3.06.

1960, bituminous mining, $3.14; motor vehicles and equipment, $2.81; blast furnace and basic steel products $3.04.

1961, bituminous coal mining, $3.12; motor vehicles and equipment, $2.86; blast furnace and basic steel products, $3.16.

[3912] 1962, for 1962 this book contained only the 11-month average, for bituminous coal mining, $3.12; for motor vehicles and equipment, $2.99; for blast furnace and basic steel products, $3.25.

1963, bituminous coal mining, $3.15; motor vehicles and equipment, $3.10; blast furnace and basic steel products, $3.31.

1964, the latest figure which was available was for the month of August, which was used in all three cases, bituminous coal mining, $3.34; motor vehicles and equipment, $3.24; blast furnace and basic steel products, $3.3

Q Now, do you have a table there showing the average weekly hours?

A Yes.

Q Of coal mining?

A Yes, sir, as compared to the other two industries

Q All right. Would you read the column and what that shows. Did you prepare that the same way?

A Yes, sir.

Q And from what source did you obtain that?

A This is from the same source, "Employment and Earning Statistics for the United States, 1909-1964," published by the Bureau of Labor Statistics, U. S. Department of Labor.

Q All right. Would you commence?

[3913] The columns in these are the same, there's the years from 1950 through '64, the industries, bituminous coal mining, motor vehicles and equipment, blast furnace and basic steel products.

In 1950, now, this is the average weekly earnings of the employees in the selected industries in 1950.

Q I am talking about the hours and you have the earnings.

A I have hours and earnings.

Q All right. Let's go on the earnings, then, go ahead.

A The average weekly earnings, bituminous coal mining, $67.46; motor vehicles and equipment, $74.85; blast furnace and basic steel products, $67.95.

In 1951, bituminous coal mining, $74.69; motor vehicles and equipment, $77.16; blast furnace and basic steel products, $77.71.

1952, bituminous coal mining, $75.04; motor vehicles and equipment, $84.87; blast furnace and basic steel products, $80.00.

1953, bituminous coal mining; $81.84; motor vehicles and equipment, $89.88; blast furnace and basic steel products, $88.29.

1954, bituminous coal mining, $77.52; motor vehicles and equipment, $91.30; blast furnace and basic
[3914] steel products, $83.92.

In 1955, bituminous coal mining, $92.13; motor vehicles and equipment, $99.84; blast furnace and basic steel products, $96.80.

1956, bituminous coal mining, $102.00; motor vehicles and equipment, $96.82; blast furnace and basic steel products, $102.87.

1957, bituminous coal mining, $106.00; motor vehicles and equipment, $100.61; blast furnace and basic

steel products, $105.57.

1958, bituminous coal mining, $97.57; motor vehicle and equipment $101.24; blast furnace and basic steel products, $108.00.

1959, bituminous coal mining, $111.34; motor vehicl and equipment, $111.38; blast furnace and basic steel products, $122.71.

1960, bituminous coal mining, $112.41; motor vehicl and equipment, $115.21; blast furnace and basic steel products, $116.13.

1961, bituminous coal mining, $112.01; motor vehicl and equipment, $114.69; blast furnace and basic steel products, $122.92.

1962, bituminous coal mining, $114.46; motor vehicl and equipment, $127.67; blast furnace and basic steel products, $127.40.

[3915] 1963, bituminous coal mining, $121.43; motor vehicles and equipment, $132.68; blast furnace and basic steel products, $133.06.

1964, bituminous coal mining, $133.27; motor vehicl and equipment, $137.70; blast furnace and basic steel products, $138.77.

Q Now, do you have another table?

A Yes, sir, this shows the average weekly hours in coal mining and selected industries, again showing the same columns, the year and the three industries.

Q And from what source did that come?

A From the same source, "Employment and Earning Statistics for the United States, 1909-1964," publishe by the Bureau of Labor Statistics, U. S. Department of Labor.

Q Would you start on those columns and go through that?

A Yes, sir. This is average weekly hours.

In 1950 the bituminous coal mining was 34.7; motor vehicles and equipment, 42.1; blast furnace and basic steel products, 39.9.

Bituminous coal mining, 1951, 34.9; motor vehicles and equipment, 40.4; blast furnace and basic steel products, 40.9.

1952, bituminous coal mining, 33.8; motor vehicles and equipment, 41.4; blast furnace and basic
[3916] steel products, 40.0.

1953, bituminous coal mining, 34.1; motor vehicles and equipment, 42.0; blast furnace and basic steel products, 40.5.

1954, bituminous coal mining, 32.3; motor vehicles and equipment, 41.5; blast furnace and basic steel products, 37.8.

1955, bituminous coal mining, 37.3; motor vehicles and equipment, 43.6; blast furnace and basic steel products, 40.5.

1956, bituminous coal mining, 37.5; motor vehicles and equipment, 41.2; blast furnace and basic steel products, 40.4.

1957, bituminous coal mining, 36.3; motor vehicles and equipment, 40.9; blast furnace and basic steel products, 39.1.

1958, bituminous coal mining, 33.3; motor vehicles and equipment, 39.7; blast furnace and basic steel products, 37.5.

1959, bituminous coal mining, 35.8; motor vehicles and equipment, 41.1; blast furnace and basic steel products, 40.1.

1960, bituminous coal mining, 35.8; motor vehicles and equipment, 41.0; blast furnace and basic steel products, 38.2

[3917] 1961, bituminous coal mining, 35.9; motor

vehicles and equipment, 40.1; blast furnace and basic steel products, 38.9.

1962, in the case of bituminous coal, this is an 11 month average, 37.0 for bituminous coal; motor vehicles and equipment, 42.7; blast furnace and basic steel products, 39.2.

1963, this is also bituminous coal, an 11 month average, 38.9; motor vehicles and equipment, 42.8; blast furnace and basic steel products, 40.2.

THE COURT: 40?

THE WITNESS: Blast furnace and basic steel products 40.2.

In 1964, the latest month for which figures were available were the month of August, which is the one that I used, bituminous coal mining, 39.9; motor vehicles and equipment, 42.5; and blast furnace and basic steel products, 41.3.

That concludes the exhibit.

Q Now, Mr. Brennan, I notice on the table entitled "Average Hourly Earnings," there's some pencil marks down there. We will leave that out.

A Yes, sir.

Q I will ask you if you will make these tables a collective exhibit to your testimony?

A Yes, sir.

[3918] MR. WALKER: Do you want to make the publication of the government a basic exhibit to this?

MR. COMBS: We have it here.

THE COURT: Those three schedules will be introduced as Exhibit 372.

(The tables referred to above were marked D372 and received in evidence.)

THE COURT: Let's take a recess. Do you need

longer than usual?

MR. WALKER: Yes, your Honor, I will try to go over some of this.

THE COURT: Let's take about a 15 minute recess.

(Thereupon, a recess was had.)

CROSS EXAMINATION

BY MR. WALKER:

Q Mr. Brennan, would you please restate to me the activities of your department with the United Mine Workers? I didn't get all of it.

A Yes, sir. The Research and Marketing Department of the United Mine Workers of America has two major functions. One is to aid in holding and expanding the present market for anthracite and bituminous coal and the second is to engage in various activities which will develop any new uses for anthracite and/or bituminous coal.

[3919] Q And your duties in this field, are you the head of the department?

A No, sir, I am not. I am the assistant to the director.

Q What are your primary duties, sir?

A Primarily to, as I said, aid in the holding and expanding of present markets and developing new markets. Principally my activities are in such areas as questions dealing with matters of such things as residual fuel oil importation and such areas as the civilian nuclear power program of the Federal Government, in evaluating and promoting research efforts to expand the market base of coal and preparing testimony such as this for presentation to various government agencies dealing with programs and policies which are adverse to coal or would be beneficial to coal.

Q Is that more on a national scale or international

scale rather than on a particular locality?

A It is entirely on a national scale, and it is entirely dealing with the competitive relations existing between fuels and between energy sources.

Q Do you have any personal knowledge of any of the conditions, cost wise of labor, materials, machinery in the Sewanee seam or particularly the Marion and Grundy Sequatchie or Hamilton County?

A No, sir, I do not.

[3920] Q Do you have any knowledge, or first, let me ask you, you referred in the readings of a competitive area. I was trying to find that, central competitive district or region, what is that, sir?

A As I understand, the central competitive area, only from my research in it, it included the western part of Pennsylvania, Ohio, Indiana, and Illinois, as I understand the term "central competitive area."

Q Does that include west Kentucky?

A I do not believe it did, sir.

Q Do you know what areas are included in the Appalachian area that was referred to on several of your readi

A I am not exactly sure, no, sir.

Q Is the bituminous coal industry at this time a depressed industry?

A Would you define, so we will understand each other, what you mean by "depressed"?

Q Lack of business, lack of work, the same as, well, it's used in your governmental idea, a depressed area.

A Again I find it difficult to understand exactly what you mean. I would say that this year, 1964, the bituminous coal industry nationally will enjoy the highest production that it has had in a number of years. Whether it would be depressed or not, I just don't know exactly how to answer your question.

[3921] Q Do you know whether or not the coal mines in Virginia are working at this time, sir?

A I am not specifically acquainted with that, no, sir.

Q Do you know whether or not the coal mines in West Virginia are working at this time?

A Again I am not specifically acquainted with either coal mining operations in any specific state. As I stated, my primary responsibility rests with the competitive relationship in the energy industry and not with the competitive relationship or the operations specifically dealing with areas and coal in coal producing sections of the United States.

Q Let me ask one more question and we will leave this field. Do you know whether or not the coal mines in southeast Tennessee are working at this time?

A I do not, sir.

Q Are you familiar with the problems that an operator encounters in the production of coal as far as his cost and other factors?

A No, sir. I personally in my department, as I say, we do not get involved in the competitive or operating structure of the coal industry as such. Our attention is rather given to the overall relationship in the fuels industries and in attempting to enhance the market potential for both anthracite and bituminous coal.

[3922] Q Do you know what method of mining was employed in a majority of the mines in the United States prior to the period of 1940 to 1944?

A I am not familiar with that, no, sir.

Q Are you familiar with the method of mining that is employed in the mining industry since 1944?

A I am familiar with the mechanization of the mining industry since 1957, when I first came with the union, but in a general way, not any specifics.

Q Where else have you been employed since your graduation from Notre Dame?

A I came directly from—well, when I say "directly within a month or two to the United Mine Workers.

Q You have been with them ever since?

A Yes, sir, since July of 1957.

Q Do you know what the average work-week of an electrician is in the United States?

A No, sir.

Q If we handed you your book, could you show us that, sir?

A Of an electrician? I will have to find the specific area you are talking about. There are a number, to expedite things, there are a number of sections under the general category of "Electrical Equipment and Supplies."

[3923] To which one do you have reference to, or is that the one that you have reference to? I am just trying to find out.

Q Just any one there. Let's see, something that would be similar to a mining industry. Look under electrical maintenance man.

A Electrical industrial apparatus?

Q That would be fine, sir.

A This is electrical industrial apparatus, it's a standard industrial code 362 and you want the average weekly hours?

Q Yes, sir.

A As of 1964?

Q 1964.

A This would be August.

Q August of 1964.

A 41.6 hours.

Q What was his average earnings per week, take-home pay?

A Weekly earnings?

Q Yes, sir.

A 1964?

Q Yes, sir.

A $109.82.

Q $109?

A That's weekly earnings.

Q Weekly earnings?

[3924] A Yes, sir.

Q That will be satisfactory. Now, do you have any knowledge of the wages that would be earned by a similar electrician in the Chattanooga metropolitan area?

A No, sir, absolutely none.

Q Do you know whether or not it would be more or less?

A I wouldn't have any way of knowing without studying.

Q Why did you select the motor vehicle and equipment and blast furnace and basic steel products to correlate the bituminous coal mining?

A Primarily because they are represented by two of the major labor unions in the United States, the United Automobile Workers and the United Steel Workers.

Q Are there any industries that are non-union that you could have compared the hours and the wages per hour and the weekly wages?

A There are industries that are non-union?

Q Yes, sir.

A Sir, this whole book is composed of industries, some may be union and some may be not, I don't know. Sure, there are other industries. The selection was made by me based on what the Auto Workers and the Steel Workers were asking.

* * *

[3912] Q Well, in preparing your research, di you find that prior to the year 1950 the policy the United Mine Workers was to strive for the equal en ment, equal working opportunities of all members?

A My research was primarily directed to the pol of the union over the years as to uniformity of wages, a such I do not remember any detailed investigation or an detailed statements that I came across dealing with the stability of employment. Certainly the Mine Workers did over the years strive to insure employment opportu ities for their members, but as for my detailed knowled of that or when it started or when it stopped, I just don' know.

Q Mr. Brennan, in your research did you find tha in 1944, speaking in the differentials of the central com petitive district and the Appalachian district, that the A lachian district was the highest wage scale?

A I don't remember the details. I'd have to look at the records again.

[3933] Q Do you remember the excerpt that you read where the statement was made that the oth fields outside of the Appalachian area were having a gre deal of competition with other fuels?

A I recall something in a general nature of the statement. I don't remember the exact wording. Of cou you must remember there were a great number of state ments, but I remember a statement that I did read this morning where they said that the desire for complete, total uniformity was hindered in certain areas by intra fuel competition, competition between fuels, and also tha certain areas of the United States, the wage levels were higher than in other areas, in the West, for example.

Q Now, I believe those were read out of Volume 2 for the year?

A May have been. I might be able to find it for you, sir. This is in the 1944 convention.

Q Yes, sir.

A I don't have the exact page, wait a minute.

Q The report of the scale committee.

A It would be about page 518. Page 518, and I think the quote is this. "Now, we have some particular problems in that respect. We have some districts in the United States outside of the Appalachian area where the rates have been made uniform on day wages. [1934] We have some districts, due to economic and competitive conditions of other fuels, where those districts today have wage rates below the Appalachian rates, and then we have other districts in the far West that have higher rates than those which prevail in the Appalachian region, and this recommendation of the committee is to study those problems for the purpose of arriving at a uniformity in tonnage and the day-wage rates in all districts."

Q Subsequent to the proceedings in this year of 1944 there came an intense mechanization of the mine fields, I believe, sir, isn't that correct?

A Yes, there was. Again I don't know exactly how you define "intense," there was a tremendous mechanization which took place in the mining industry, yes, sir.

Q In '44 they had, according to this, a high wage rate in the Appalachian area, there has been mechanization. Would you tell us why there has been so much trouble on the wage rates in the Appalachian area since mechanization?

A I don't know. This is entirely out of my jurisdiction, I just don't know.

Q Now, studying the economics of the whole situation, have you had any reason or cause to study the price of coal in the southeastern Tennessee area?

MR. COMBS: Now, I object to that question. The witness testified that he has not made any study
[3935] of the coal economics and counsel is asking of the local economics.

BY MR. WALKER:

Q Well, in your studies of the coal situation, the utilities and other aspects of the coal industry nation-wide have you had any reason to study the price of coal going into the TVA utility?

A No, sir.

Q Have you ever had any reason to study the price of coal for Georgia, Alabama and Kentucky?

A No, sir.

Q What about the Louisville, Kentucky, utility?

A No, sir. My work, Counselor, is basically, as I say, on the national level.

Q As to whether or not any of these wage rates that were read into the record on Exhibit 372, the average weekly hours in coal mining and selected industries, average hourly earnings in coal mining and selected industries average weekly earnings in coal mining and selected industries, you have no knowledge whether any of these are applicable to the southeast Tennessee area?

A No, sir, they are taken from a book and that book, as I understand it, deals nationally with the industry involved.

Q And the prior exhibit, 371, your comparison in increase in hourly earnings between bituminous
[3936] coal mining and other industries for the period 1951 to 1964, showing an absolute increase in hourly earnings and a percentage increase in hourly earnings for seven industries, bituminous coal mining, quarrying, non-metallic mining, metal mining, petroleum and natural gas production, all manufacturing, blast furnaces

and basic steel products, lumber and wood products (except furniture), ship and boat building, motor vehicles and equipment, do you know whether or not in the south-east Tennessee area whether we have any of these or other related fields?

A Not specifically I do not. Again these are national figures.

Q As to their applicability as to the coal mining industry in this area or in the Appalachian area is there any correlation between the prices paid for coal mining and the prices paid for building ships?

A Wait a minute. Are we talking about wages or prices?

Q Wages, hourly.

A I am not familiar with the mechanical method used by BLS to compute these figures. I can only assume that they are representative of the seven industries taken on a national level, other than that I just don't know if they would apply here or somewhere else, I don't know. These are government figures, not mine, so how they are computed, I am not sure.

[3937] MR. WALKER: That's all.

MR. COMBS: May this witness be excused?

MR. ROWNTREE: Yes.

THE COURT: All right.

(Witness excused.)

MR. ROWNTREE: May we read from this Jacksonville agreement?

THE COURT: Yes, sir.

MR. COMBS: I would appreciate it because he wants to catch a plane if you are going to excuse him.

MR. ROWNTREE: It will be all right to excuse him. This is on page 69 through 71, 1927 minutes of the United Mine Workers' Convention. The report of President Lewis

under the heading of "Jacksonville Agreement."

"It will be recalled that the international convention of 1924 formulated a wage policy calling upon the officers and scale committee of the central competitive field to negotiate the best agreement possible for the bituminous industry, based upon no reduction in wages. In consequ of this action and pursuant to the adjournment of the convention, the joint conference of miners and operators of the central competitive field convened in Jacksonville, Florida, February 11, 1924. At this conference an agre ment was negotiated for the central competitive [3938] field extending the then existing scale of wages for a period of three years, until March 31, 192 This agreement was overwhelming ratified by the member ship of the United Mine Workers by a referendum vote.

"Following the negotiations of the Jacksonville Agreement, supplemental agreements based thereon were negotiated by the operators and miners in all outlying bitumino districts where previous contracts had prevailed, with the exception of the southern section of District 17 and Districts 18 and 23.

"It is unfortunate from every standpoint that the operators of these three districts elected to destroy their relationship with the United Mine Workers of America rather than to negotiate wage agreements based upon the contract in the central competitive field. The policy inaugurated by these operators compelled our organization to devote its energy and substance to the protection of the principle of collective bargaining in these districts.

"Our membership in these districts made an heroic struggle and endured great personal sacrifice in defense of their living standards and their union. In each district the most severe methods were resorted to by the operating interest to crush the spirit of the men—the employment of

mine guards in great numbers; the importation of thousands of strike-breakers from the agricultural sections
[3939] of the South; the widespread use of the injunctive weapon; the eviction of tens of thousands of our people from their homes by armed force and ofttimes without warrant of law; and every other conceivable instrument of oppression was utilized.

"This condition of industrial warfare in mining territory where trade agreements formerly existed added to the confused state of the industry and constituted a heavy drain upon the financial resources of our organization which had been built up with the expectation of being used in a great forward movement and organizing campaign in the non-union sections of the industry.

"In addition to the hostile actions of the operators of District 17, 18 and 23, it developed that many of the operators who signed the Jacksonville contract and its collateral agreements did so in the utmost bad faith. The ink was scarcely dry upon the new agreement when operators in central Pennsylvania, Ohio, and the southwestern mining districts publicly denounced the contract as being detrimental to their interest and predicted its later dissolution. It thus came to pass that within a few months after the execution of the 1924 agreement, operators in widely scattered districts were demanding a modification of the agreement and a reduction in its wage schedules. During the summer of 1925, this demand for wage reductions was organized upon a large scale among the coal-
[3940] producing interests of the country, and the officers of the organization, both district and international, were continually importuned to participate in wage conferences for this purpose. In the meantime, the operating interests of the non-union territory were profiting at the expense of the organized industry and the bulk of the ton-

nage displaced by the strikes in the Kanawa River section and in the coalfields of southwestern Kentucky was taken over by competing non-union interests in contiguous fields. The coal operators of the country, by the very act of their ceaseless lamentations, thus intensified their own misery and made more difficult the problems of our organization and aided their non-union competitors to gradually take over their own natural markets.

"Hard upon the heels of this situation came unqualified and unwarranted repudiation of the binding terms of the wage agreement by such coal companies as the Bethlehem Mines Corporation, the Consolidation Coal Company, and the Pittsburgh Coal Company, with a number of additional coal companies following the lead of such a policy. Every effort was made by the officers of the organization to crystallize public opinion against the unmorality of the policy of repudiation of wage contracts. Governmental influences which were exercised to bring about the negotiations of the Jacksonville Agreement failed to operate in any moral way to compell the recalcitrant operators to live up to the agreement which they had executed [3941] with apparent good faith. This situation constituted a rather sad commentary upon the state of public opinion of our land. Trade unions from time immemorial have been lectured by statesmen, employers, economists, and moralists upon the virtue of carrying out the obligations of industrial agreements when negotiated."

* * *

[3950] MR. COMBS: All right. If the Court please, we offer as an exhibit Case No. 111-1284, a directive of the War Labor Board dated June the 18th, 1943. This involves a matter of the operators' negotiating committee, Appalachian joint conference, operators' negotia-

ting committee, Central Appalachian Joint Wage Conference, Central Pennsylvania Coal Producers' Association, and the United Mine Workers of America.

[3951] We offer that part in the directive that deals with the protective wage clause.

THE COURT: Exhibit No. 373.

(The directive referred to above was marked D373 and received in evidence.)

MR. COMBS: We offer as an exhibit another directive of the War Labor Board dated May the 25th, 1943, in the matter of operators' negotiating committee, Appalachian Joint Conference, operaters' negotiating committee, Southern Appalachian Joint Wage Conference, and the United Mine Workers of America, and this directive order dealt with the land lease clause of the contract that has been in dispute here and it also dealt with differentials and that part of the exhibit we offer for that purpose.

THE COURT: Exhibit No. 374.

(The directive referred to above was marked D374 and received in evidence.)

MR. COMBS: Now, we offer as an exhibit Bulletin No. 714, issued by the United States Department of Labor and it is a report of the work of the National Defense Mediation Board, March 19, 1941, to January 12, 1942, and we refer in this exhibit to Case No. 20, which is titled "Bituminous Coal Operators, Appalachian Mines and United Mine Workers of America, CIO", and this certified this dispute to the Mediation Board on a strike April the 2nd and the 30th and hearings were held. This

[3952] Mediation Board was a forerunner of the War Labor Board, and I'd like to read from that exhibit certain portions thereof.

(The report referred to above was marked D375 and received in evidence.)

MR. COMBS: The panel was Davis, Teagle, Golden and the assistant, Cox.

"On April 2nd, when a contract had not been negotiated to replace the one that expired March 31, all coal miners went on strike. Negotiations continued. About two weeks later the operators of the mines in the southerly portion of the Appalachian area withdrew from the conference. On April 21, UMWA and the operators in the northern Appalachian area reached and initialed an agreement. The strike, however, continued, waiting a settlement of terms for the Southern Appalachian field. On April 21st the President of the United States issued a proposal for settling the strike, which was accepted by the northern operators and by the United Mine Workers. The operators in the southern portion reserved their acceptance.

"On April 24th the case was certified by the Board. Hearings were held continuously until April 27th, when the Board issued the following recommendation on April the 27th:

"The panel of the National Defense Mediation [3953] Board, designated to act in the dispute between the bituminous coal operators and the United Mine Workers of America, has explored at length the matters in controversy. The proceedings have been conducted in the presence of the fact that the President of the United States on April 21, 1941, publicly recommended and urged that:

"'1. The miners and operators already in agreement resume coal production under the terms of that agreement.

"'2. The operators and miners who have not yet reached an agreement, enter into wage negotiations and

at the same time re-open the mines, the agreement ultimately reached to be made retroactive to the date of resuming work.'

"Throughout the discussion the principal point in controversy, the one which in the judgment of the panel has prevented an agreement, was the matter of a differential in the daily wage rate, between that portion of the Appalachian coal region which lies principally in the western portion of Pennsylvania, eastern Ohio, and the northern part of West Virginia, on the one hand, and that portion of the Appalachian region which lies principally in the southern portion of West Virginia, eastern Kentucky, and portions of northern Tennessee and western Virginia, on the other hand. The United Mine Workers and the operators in the northerly portion of the Appalachian region have accepted without reservations the President's proposal. The operators in the southerly portion
[3954] of the Appalachian region have not accepted it.

They have not at any time been willing to agree that wages fixed by future negotiations be made retroactive to the date of resuming work. Many formulas have been discussed. The last offer of those who have not agreed to the President's proposal was to fix their wage scale now on the basis of an addition of $1.00 to the daily wage and a properly related percentage increase in other wage rates; wages not to be subject to further negotiations, and the contract to run to March 31, 1943. This offer as made did not directly mention the differential. The effect of it was that elimination of the differential could be brought about only if the Mine Workers would surrender 40 cents of the $1.00 increase to which the operators in the northern portion of the Appalachian region had agreed. This offer was rejected.

"After the most careful consideration, the panel was

unable to recommend this offer as a substitute for the President's proposal.

"The panel, therefore, unanimously recommends that the President's proposal, as made on April 21, as quoted above, be accepted today by the miners and all operators in order that production of coal essential to the national defense may begin on Monday, April 28, 1941.

"These recommendations were accepted immediately by the northern operators and the union. Late
[3955] the following evening, after the hearing before the special Senate committee investigating nation defense, the southern operators accepted. On April 30, work was resumed.

"Further negotiations between the parties proved unfruitful and the Board recalled the parties to Washington on May 23. Joint and separate conferences were held continuously until the Board issued further findings and recommendations on June the 5th.

"In the matter of the dispute between the bituminous coal operators and the United Mine Workers of America, the National Defense Mediation Board on April 28, 1941, recommended the acceptance of the President's proposal of April 21, 1941, that——

"'1. The miners and operators already in agreement resume coal production under the terms of that agreement

"'2. The operators and miners who have not yet reach an agreement, enter into wage negotiations and at the sam time re-open the mines, the agreement ultimately reached to be made retroactive to the date of resuming work.'

"In our recommendation of April 27, we pointed out that the United Mine Workers and the operators in the northerly section of the Appalachian area had accepted the President's proposal. On April 30, the operators in the southerly section of the Appalachian area accepted the President's proposal on the basis of a temporary agreemen

[3956] entered into on that date with the United Mine Workers, and the production of coal throughout the Appalachian area was resumed and has continued since that time. The temporary agreement provided for the continuation of negotiations as to all those provisions incorporated in the new Appalachian agreement which the operators in the northerly section had approved and which the operators in the southerly section had not approved. Negotiations between the United Mine Workers and these operators were accordingly resumed, but they did not lead to an agreement, and on Friday, May 23, the parties again came before the National Defense Mediation Board.

"Throughout the discussion the principal point in controversy has been the 40-cent differential in the daily wage rate between that part of the Appalachian coal region which lies principally in the western half of Pennsylvania, eastern Ohio, and the northern part of West Virginia, on the one hand, and that portion of the Appalachian region which lies in the southern part of West Virginia, eastern Kentucky, and portions of northern Tennessee and western Virginia on the other hand.

"In the NRA coal code negotiations in 1933 and 1934, two differentials in favor of the operators in the southern section were agreed upon:

"'1. A 40-cent-per-day lower daily wage. This 40-
[3957] cent differential in the daily wage rates amounts on weighted average to something between 3 and 3-1/2 cents per ton.

"'2. Lower tonnage rates, which on the weighted average amount to about 15 cents per ton.'

"Under the new Appalachian agreement establishing wage rates up to and including March 31, 1943, the tonnage differentials remain unchanged, so that the operators in the southerly section retain in any event approximately

five-sixths of the wage-cost differential in their favor. The sole question of differential before the Board is as to the elimination of the 40-cent daily wage rate differential which amounts to about one-sixth of the total differen

"To understand the problems presented by this princip point in the dispute, it is necessary to know about the wa in which wages for coal mining have been established. The coal miner himself—the man who actually mines the coal and loads it into coal cars in the mines—is paid for his work on a tonnage basis. (To this general rule there are some exceptions, of which the principal one is that some of the machine loading is done on a day-wage basis.) The work that is done on a day-wage basis, and that is unaffected on the controversy about the 40-cent differential, is the work incidental to the actual mining of the coal by inside day workers, such as timbering, track laying, drainage, ventilation, and hauling and hoisting, and the work done on the surface outside
[3958] of the mines.

"Industry-wide collective bargaining in bituminous coal mining had its beginning as far back as 1886 when a joint conference was initiated between the operator and miners in Ohio, Indiana, Illinois, and Pennsylvania. The area covered by the joint conference has varied from time to time through the years. The tonnage represented has varied from about 40 per cent to about 70 per cent of the total national production of bituminous coal. At all times the area covered by the joint conferences has been referred to as the 'central competitive field,' and collective bargaining in the industry has been characterize by the fact that the wage rates fixed by negotiations for the central competitive field have, under the impact of existing competitive relations, determined the levels of wage rates paid in all other bituminous coalfields in the

United States. These other areas have been referred to as the outlying districts.

"From the beginning the competitive difficulties of the operators have been important causes of industrial strife. The United Mine Workers have consistently urged that wages and working conditions should be as uniform as possible for their entire membership; but from the beginning the competitive relation of the operators has had its effect. As early as the joint conference of 1902, this fact was emphasized in the statement, 'That this movement is founded and—is to rest, upon correct
[3959] business ideas, competitive equality, and upon well-recognized principles of justice.' Although the Mine Workers have recognized the pressure of competitive conditions and because of them have accepted lower tonnage rates in districts where coal mining conditions are difficult and in districts which are unfavorably located with respect to the market, nevertheless, they have continuously insisted upon a uniform basic daily wage rate and have attempted to confine the differentials to tonnage rates. Wherever possible the United Mine Workers have pressed their case for uniformity of wages and working conditions and in the joint agreement of 1898 uniform daily wage rates for all inside labor were established, and after the acceptance in 1906 of the principle that the United Mine Workers have jurisdiction over all work in and about the mines, much progress was made in establishing a uniform daily wage rate for outside workers. In 1924 the joint conference broke up and the industry fell into chaotic competitive and wage conditions which continued until the establishment of the NRA Code in 1933. By that time the production of coal in what is now the lower Appalachian region had greatly increased and the NRA Code set up a new central competitive area including Pennsylvania,

Ohio, Maryland, eastern West Virginia, eastern Kentucky and portions of northern Tennessee and western Virginia, and representing about 70 per cent of the total
[3960] national production of bituminous coal.

"Prior to 1933 there existed little or no unionization of the mines in the southerly portion of this area. Wages throughout the industry had fallen to very low levels and were non-uniform but in general lower in the southerly portion of the new central competitive area than in the northerly portion of that area. This condition resulted in the negotiated agreement fixing the differential in the daily wage rates at 40 cents per day, and also fixing the differential in the average tonnage rate. Both groups of operators, because of the competitive effect of any differential in wage rates, reserved the right to renew at any time their respective contentions about the propriety and the amount of these differentials.

"Prior to the joint conference which began in March of this year, the two groups of operators had agreed that the question of the differential would not be raised as between them in the negotiations. At the beginning of the conference the United Mine Workers demanded a wiping out not only of the differential of 40 cents in the daily wage rate but also of the differential in the tonnage rate. As a result of collective bargaining the demand for wiping out the differential in the tonnage rate was eliminated. In the meantime, certain proceedings before the Ways and Means Committee of the House, in an investigation
[3961] preliminary to re-enactment of the Guffey Act, seemed to point to a division of existing price area No. 1 into two sections, putting Pennsylvania in a separate price area. The operators in the northern section who were apprehensive about the competitive threat continued in this suggestion and attributed its instig-

tion to operators of the southerly group, thereupon fell into disagreement with the operators in the southerly section as to the question of wiping out the 40-cent differential in the basic daily wage rate, and swung over to the support of the United Mine Workers in this demand. Thereafter the operators in the southerly section withdrew from the Appalachian conference and organized the Southern Coal Operators' wage conference.

"As a result of this interruption of the unity of the operators, there was included in the new Appalachian agreement the so-called 'protective wage' or 'favored nation' clause in which the United Mine Workers bound themselves to wipe out the daily wage differential, that is, they agreed that if any more favorable terms as to the daily wage rate were granted to the operators in the southerly section, the operators in the northern section would have the benefit. Such a clause has been customary in the district wage agreements under the old Appalachian agreement, to protect its operators against competitive wage cutting. Its inclusion in the new Appalachian agreement meant that the 40-cent differential was to
[3962] be wiped out. Any reduction of the 40 cents demanded from the operators in the southerly section would result in a corresponding reduction of the wage increase agreed to by the operators in the northerly section."

I will skip a paragraph.

"The position of the Mine Workers that the same wages should be paid for equivalent labor throughout the Appalachian area has in itself considerable weight in favor of wiping out the 40-cent differential in daily wage rates. It is conceded that the Mine Worker in southern West Virginia and eastern Kentucky lays just as much track, sets just as much timber, and mines just as much coal per day

as the Mine Worker in northern West Virginia and western Pennsylvania. But putting this consideration aside, we have examined the problem in its competitive aspects, giving careful consideration to each of the points and to all of the evidence brought to our attention."

I will skip over to other places. This exhibit shows that the operators and the union submitted certain charts on cost and wages and et cetera. I will skip over that, it is in the exhibit.

I will read from page 113 at the bottom of the page.

"The final point advanced by the operators in the southerly section is the assertion that if their mines
[3963] are to survive and furnish employment to their miners, the 40-cent differential must be maintained. We do not find any evidence sufficient to support this assertion. We have already discussed the comparative wage costs and the total realization in the two areas. Another approach is possible by way of an examination of the actual distribution of production from the northern and from the southern districts over the years since the adoption of the NRA Code. Exact figures have been submitted for the years 1936, 1938, 1939, and 1940. These figures show that, over these years, the two northern districts, one and two, have not quite held their own in the competitive battle; they now produce a slightly lower percentage of the total national production than they did in 1936. On the other hand, the two southern districts 7 and 8 have slightly improved their positions: they now produce a slightly greater percentage of the total national production than they did in 1936. These figures hardly support the contention of the operators in the southerly section that the addition to their costs of the 3 cents to 3-1/2 cents represented by the 40-cent differential will subject them to unendurable competitive burden.

"For the foregoing reasons we conclude that there is no ground upon which the Board can recommend that the 40-cent differential in basic daily wage rates should be retained, and the Board recommends that it be
[3964] eliminated.

"In approaching the remaining points in controversy it should be remembered that the provisions of the new Appalachian contract have been accepted by the operators in the northerly section who produce approximately 55 per cent of the total tonnage in the Appalachian area and that these provisions have also been accepted by all outlying districts except Alabama. On the whole, therefore, the provisions have been accepted by the producers of at least 70 per cent of the total national tonnage of bituminous coal."

The exhibit goes ahead to comment on the additional points in dispute, and I will just read the sub-heads without reading the paragraph.

Paragraph one deals with basic tonnage rates.

Paragraph two deals with the reject clause.

Paragraph three deals with vacations with pay.

Paragraph four deals with safety practices.

Paragraph five deals with seniority.

Paragraph six deals with payday.

Paragraph seven deals with medical and hospitalization services.

Paragraph eight deals with physical examinations.

Paragraph nine deals with house rents.

Paragraph ten deals with the protective wage clause.

Paragraph eleven deals with tonnage conveyor
[3965] rate adjustments.

The concluding part of that case is this:

"On July 6th a contract more or less based on these recommendations was signed, but it contained the memorial

and protective wage clauses, the union's demand for which had been refused by the Board. The northern operators had finally agreed to them to get their mines open and, though the southern operators protested (and were in some measures supported by the President and by the Board), they finally capitulated."

I offer this as an exhibit.

THE COURT: Exhibit 375.

* * *

[3983] **H. G. SCHMIDT**

DIRECT EXAMINATION

(The questions were read by Mr. Combs and the answers by Mr. Rayson.)

"Q Will you give the reporter your name
[3984] as you usually sign it, please?

"A H. G. Schmidt.

"Q Mr. Schmidt, how old are you?

"A I am sixty-one years old.

"Q And your place of residence?

"A I reside in Cleveland, Ohio.

"Q Were you a native of Cleveland, Ohio?

"A I am now a native of Ohio, but I was born near Junction City, Kansas.

"Q What is your educational background, please?

"A I was born on a farm near Junction City, Kansas. I attended the elementary schools in that town. I graduated from the high school there and subsequently attended the University of Kansas at Lawrence, Kansas, and later I also at a later date, several years later, I attended the Massachusetts Institute of Technology. I worked on my

Master's degree at that time.

"Q What field did you take your degree in, or what was your field of study when you were at the University of Kansas?

"A I studied mechanical engineering and received a degree in mechanical engineering, bachelor of science in mechanical engineering."

MR. COMBS: We skip to the top of page 1051.

"Q The nature of that job and how long you [3985] followed it please, what happened then?

"A At Goodyear?

"Q Yes.

"A Yes. Well, I stayed there for a long time. I was with Goodyear for 15 years.

"Q Where did you start with Goodyear, and what type of job when you left there?

"A I started in as a steam engineer, and rose very rapidly with that company—with that great company, I might add—to the position of manager of the engineering staff, and in that responsibility I was in charge of design and construction of plants for Goodyear all over the world, and also more or less as a side issue, I was general manager of the Wheeling Township Coal Mining Company, a wholly-owned subsidiary of Goodyear. That was how I got into coal.

"Q That was your first connection with coal?

"A Yes, sir.

"Q Now, what type of mining operation did Goodyear have through this subsidiary corporation?

"A This mine was purchased during World War I as a source of fuel for their own power plants. The company had signed what I considered to be a very unfavorable lease, and when I took charge, it seemed very clear to me that we would have to develop outside sales to make

the corporation a successful one, and this I did.

"Q You mean sales of coal other than that [3986] what you used in your own company?

"A To others, to consumers other than Goodyear, and that mine, when I left, was producing about a million, two hundred thousand tons of coal from the Pittsburgh No. 8 seam.

"Q Where were the mines of this subsidiary of Goodyear located?

"A This mine was very close to Cadiz, Ohio.

"Q How close were you associated, now, in the operation of that mine?

"A I was general manager of that mine. I took a great interest in it. I developed it from a small mine of about 300,000 tons of coal a year to a million, two hundred thousand tons a year.

"Q What type of mine was it with reference to its operation, mechanized mine or otherwise?

"A Yes, it was a mechanized mine. It had just been mechanized partially when I took over in about 1932.

"Q Do you know about how many men you had employed

"A I would recall at this late date about two or three hundred men, four hundred men, maybe.

"Q When did you leave the Goodyear Tire and Rubber Company?

"A I left the Goodyear Tire and Rubber Com- [3987] pany at the end of June, 1942.

"Q And then with whom did you go and what line of work did you enter into?

"A I was asked by the directors of the North American Coal Corporation to assume the full responsibility of that company in Cleveland."

"Q What size organization was the American Coal Corporation?

"A Well, at that time it was rather small, it was about the thirty-fourth in size in the United States, mining about two million tons, maybe a little more, maybe a little less.

"Q Annually?

"A Annually, that's right.

"Q Did you carry the responsibility as the chief executive officer of that corporation from the time you went with it?

"A Yes, I was elected the chief executive officer on July 1st, 1942, and I continued in that capacity to this date.

"Q Where does North American Coal Corporation have its coal operations?

"A I believe the figures will disclose that at the present time and for the year just ended we are the eighth largest commercial coal producer in the United [3988] States.

"Q Where are your mines?

"A Our mines are located in Ohio, West Virginia, Pennsylvania, and a lignite mine, a small lignite mine, in North Dakota.

"Q Are your mines mechanized?

"A They are fully and completely mechanized, yes, sir.

"Q Does the North American Coal Corporation have a collective bargaining agreement, or is it a party to the 1950 collective bargaining agreement with the United Mine Workers of America?

"A They do.

"Q Did you personally participate in the negotiations for this company, this corporation, with the United Mine Workers of the collective bargaining agreement?

"A Only intimately in the negotiations that took place

a year or two ago. I was informed as to the trend of negotiations that took place, but at no time had I taken an active part until the last period of negotiations.

"Q Someone else was doing the negotiating for your company before that time?

"A Yes.

"Q I believe you are now one of the trustees of the United Mine Workers of America Welfare and Retirement Fund, are you not?

"A Yes.

[3989] "Q When did you become one of the three trustees of that fund?

"A If my memory serves me correctly, it was on or about May 9, 1958."

MR. COMBS: Skip the next question.

"Q In what way were you selected as a trustee of this fund?

"A It was one of those unusual circumstances. Charley Owen had passed on; the office of trustee appointed by the operators was vacant. I had expressed considerable dissatisfaction with the $35,000 a year that this man had received from the fund. I thought it was wrong, and when this matter was discussed in a meeting of the Bituminous Coal Operators' Association, I voiced my feeling, as I had on prior occasions, and as usual in circumstances of that nature, I was appointed on the committee to find a person who would serve adequately and properly.

"We had great difficulty finding anyone that was satisfactory to the industry. We had meetings with the Southern Coal Producers' Association. I remember a meeting with Mr. Moody, and there may have been others from that group, but I don't remember their names.

"It seemed as if there was no one who was qualified. We thought we had an ex-vice-president, a retired vice-

president at Consolidation Coal that everyone seemed to agree to, but when he was opportuned, he turned [3990] it down.

"Later at a meeting in Washington with the Southern Coal Producers' Association, Mr. Moody turned around to me and said, 'Well, why don't you take the job?'

"I was quite surprised that he would even suggest it. He made the statement that he thought the entire industry would approve of my appointment. I told him I didn't think I would have the time for it, but on the way back to Cleveland in the plane, I decided that if there were no objections from any substantial operators, or substantial group of operators or important tonnages, that I would accept.

"So I called Mr. Moody and told him of his conversation and his remark, and it was a rather casual remark, I thought, and I said to him that if he would sponsor my nomination and there was no important tonnage that objected to me as an individual, and if the operators would pay the cost of my lawyer's services, I would take the job entirely without pay or remuneration of any kind.

"I said, 'Now, Mr. Moody, I will leave this to you and I will do nothing about it.'

"I heard it took some little time to obtain the consent of the various operating groups and the various companies.

"At a later time I was officially notified by, [3991] I believe it was from Mrs. Roche, but it may have been from Mr. Mitch. I am not certain and it doesn't really matter—that I had been accredited and accepted and there would be a meeting on about May 9th, 1958, and I attended it as a trustee at that time.

"Q As I recall, the collective bargaining agreement which provides the method of selecting trustees, it provides that the trustee to be chosen of this fund by the oper-

ators shall be chosen by operators representing 51 per cent of the tonnage produced?

"A Yes, sir.

"Q And you were, so I understood, had been so selected?

"A I understand that is the case, yes, sir.

"Q Since then, which was in the early spring of 1958, have you been serving as a trustee of the fund?

"A Yes, sir."

MR. COMBS: Now we skip over to the next page, at the top of page 1056.

"Q You think, as near as you can now recall, that you have attended all of the meetings of the fund since you have been a trustee?

"A I have attended all of the meetings since I have been a trustee.

"Q What is the duration, I mean the period [3992] of time, length in hours or whatever it may have been, that a meeting ordinarily lasts?

"A I don't believe we have ever finished a meeting in less than two hours, and it is my recollection that two or three have lasted almost four hours.

"Q Tell the jury and His Honor, in a general way, the method of conducting those meetings and what business you transact at them.

"A In my judgment those meetings are transacted in a very business-like way. The minutes of the last meeting are read; if there are any corrections, they are made, or any supplements to the minutes they are made. We then receive reports from counsel, Mr. Mitch.

"Q Mr. Val J. Mitch?

"A Mr. Val Mitch, and this usually takes a good deal of time.

"Q We will stop long enough at this point to explain

to the Court what is the nature of the reports that the counsel to the fund make to the trustees at these meetings.

"A Well, those reports are indeed voluminous. They cover a report of settlements that have been made, and decisions that have been made in the various courts mostly in the District of Columbia.

"They comprise new lawsuits that the fund
[3993] institutes against many defendants. Almost all of those are in the nature of lawsuits initiated to collect royalty payments that are in arrears.

"They also include such lawsuits that are instituted against the fund. They also include any formal transactions, such as the transfer of real estate and other legal matters that may, or that need the attention of the trustees and need the action of the trustees.

"Q Are all actions that have been brought by the trustees in the interim between this meeting and the previous one wherein the trustees are seeking to collect delinquent royalties, reported to you people, the trustees?

"A They are all reported. They are reported at every meeting.

"Q Then from meeting to meeting as progress takes place in those respective suits, is that reported to your people?

"A That is also reported. We ask many questions, and Mr. Mitch always had the answers. He is fully informed as to the status of the lawsuits, and also he will express an opinion as to when they might be terminated."

"Q But he makes a detailed report with reference to all this litigation?

"A He does, indeed.

"Q What action, if any, do the trustees take
[3994] with reference to the report made by the counsel?

"A At the end of the discussion, or rather at the end of the report of Mr. Mitch and at the end of the discussion, too, there is almost always a long discussion in connection with these lawsuits that are approved by the trustees.

"Q Do the trustees give any instructions to the counsel that certain operators are to be sued and others not to be sued and exercise that kind of control by the trustees?

"A Not in the form that he is ordered to take a specific action. He recommends the action. We review it and we, to my knowledge, have always accepted his recommendation and have approved his views.

"Q Is there any policy on the part of the trustees of singling out or sorting out certain operators and bringing suit against them rather than others?

"A Never.

"Q Has there ever been on the part of the trustees since you have been a member of this board of trustees, any efforts to sue punitively against some operator?

"A Never.

"Q What does, as far as you know, guide the decision that Mr. Mitch makes and as approved by you
[3995] people as to who shall be sued?

"A I have learned to know Mr. Mitch after three years of association with him, as I have my fellow trustees, and also Mr. Ryan, and I am impressed with his ability, his sincerity and his impartiality, and I feel that he is honest, capable, thoroughly reliable man of high character and I don't doubt in the slightest that he is making his recommendations, and he has made his recommendations on the basis of complete impartiality.

"Q Has your board of trustees, you individually or the board as a group, since you have been a member there

ever taken any action to instruct counsel or his staff to sue any particular operator or operators for the purpose of embarrassing or putting out of business that operator?

"A Never.

"Q Has any such type of function or operation ever been discussed that you know of?

"A Never.

"Q Has the bringing of lawsuits, so far as you know, ever been used as a method for forcing out of business any particular operator or group of operators?

"A I do not believe that has been done. I am convinced it has not been done.

"I might add that I have interrogated not only Mr. Mitch but Mrs. Roche at length in regard to that, [3996] because it has many times come to my attention from other operators that deals have been made, and I have asked them in all of those situations to produce the facts, that I was very much interested and if they would produce the facts and bring them to the attention of Mrs. Roche, that they would be properly investigated and a report made.

"It might be interesting to these proceedings to know that not one of these alleged claims that deals are made has ever been made to Mrs. Roche. They have never followed up on my suggestion. So I discounted the statements completely.

"Q No facts or information has ever been submitted to you indicating the truth of any statement of that sort?

"A Not one single fact.

"Q That applies to this entire period of some three years you have been a trustee?

"A In my entire period as a trustee.

"Q There has been something said in this record with reference to pensioners, that is retired miners who

draw pensions, serving on picket lines where there is an organizational campaign going on by the United Mine Workers of America.

"Has any effort been made so far as you were aware during the period of time you have been in custody of the fund, to command or dictate the pensioners that
[3997] they must go on the picket line?

"A There has never been a discussion of that nature at our meetings in Washington, and no action has ever been taken officially or unofficially in that connection. It just has never been discussed.

"Q So far as you are aware has that even been discussed or has any informal action or word gone out from the trustees?

"A No. I am convinced that no such action was taken by any trustee in that connection.

"Q Do you personally know of how many instances benefits, pensions and so on, have been paid, during your period, to retired miners who were not members of the United Mine Workers of America?

"A I have no information as to the number; no.

"Q Do you know that the fund, though, has a policy that membership is not necessary for the payment of benefits?

"A That is the policy of the fund as clearly stated in the resolutions.

"Q So far as you know, has that policy, during the period of time that you have been a trustee, been thoroughly carried out?

"A It has been carried out to the best of my knowledge and right out all through the administration of the fund."

MR. COMBS: Do you want to read any cross-
[3998] examination?

MR. ROWNTREE: Yes.

CROSS-EXAMINATION

(Mr. Rowntree read the questions and Mr. Rayson the answers.)

"Q Mr. Schmidt, you were appointed as trustee of the fund May 9, 1958?

"A Yes.

"Q You appear to have a predilection to taking pay from the trust fund?

"A Yes, sir.

"Q You have some reasons for that?

"A Yes, indeed.

"Q What are those reasons?

"A In my judgment the trustee appointed by the operators should be an operator himself. I believe that he should be active in the coal business. He should have some experience in dealing with these social problems and the labor problems. The man undoubtedly has an income of his own. This is a charitable trust. It never made sense to me that the operator-appointed trustee should receive $35,000 a year for attending a few meetings. The amount seemed very large and out of proportion to the whole character of the setup.

"Of course, the man that serves has tremendous
[3999] liabilities, possible liabilities. He is exposed to many lawsuits and many charges of all kinds. And yet with all of that, it seemed to me that a person appointed by the operators, if we were to receive any pay at all, was to receive it from the operators themselves, not from the fund.

"The fund is a charitable trust and is set up and organized for the sole and exclusive purpose of providing welfare services, health and medical services to coal miners, signatory to the operators, and to provide pensions, and also to help the survivors of mine disasters.

"It seemed to me that the operator-appointed trustee should be willing to serve without pay.

"In my own case, I am adequately remunerated by my own company. I also have substantial income otherwise. In the first place, I feel I owe it to the industry, I owe it to the coal miners, I owe it to society, to give some of my time to this great effort. And it was for that reason for those reasons that I agreed to serve as a trustee.

"Q Now, Mr. Schmidt, I remind you that you were added as a party to this case because your appointment did occur after the case was filed, your addition to the case being on or about May 29, 1958, as a party to the case. Now, your predecessor was Mr. Charles Owen, is that correct?

"A Yes.

"Q Mr. Owen did receive pay from the [4000] trust fund?

"A Yes.

"Q Mr. Owen was appointed in the contract of 1950?

"A I don't know that to be a fact."

MR. ROWNTREE: Middle of the page.

"Q He was your immediate predecessor?

"A Yes.

"Q Now, Mr. Owen, I believe, died July 20, 1957?

"A About that time. I could not certify as to the exact date.

"Q And you were appointed May 9, 1958?

"A Yes.

"Q Approximately nine to ten months after?

"A Yes.

"Q After Mr. Owen died?

"A Yes.

"Q Did the operators have a trustee on the Welfare Fund in that interval of time?

"A No.

"Q Did the trust fund continue to operate in that interval of time?

"A Yes.

"Q And could you estimate the amount of money the trust fund received and paid out during that interval of nine or ten months?

"A Without quibbling as to the exact figure,
4001] it must have been in the proximity of 90 million dollars of receipts and about 90 million dollars of expenditures in nine months. It is about 10 million or maybe a little more. Sometimes it has been as much as 11 or 12. Say from 90 to 100 million dollars.

"Q Did you accept the practices and procedures which you found in the trustees' fund when you came into office?

"A I did.

"Q There has been no changes since you took the office?

"A Yes, there have been many changes. Yes, quite a number of changes in the benefits paid to miners and the amount of money paid to pensioners."

MR. ROWNTREE: About the sixth or eighth from the top on 1064, well, the third line.

"Q And also was there not a change which eliminated those miners who were connected with the management of a mine from receiving a period of eligibility for pensions while they were connected with management?"

MR. RAYSON: I think that you should read the preceding question so we can get the continuity.

"Q I believe one such change was reduction in the pensions?

"A There was also reduction in medical pay and in the rules and regulations pertaining to the qualifications

[4002] of those receiving medical benefits.

"Q And also was there not a change which eliminated those miners who were connected with the management of a mine from receiving a period of disability for pensions while they were connected with management?

"A I believe that was discussed. My memory is a little hazy about that, but yes.

"Q Was not the purpose of that to eliminate from eligibility these small mines, the miners in these small mines who would get together and form a company and open up a small mine?

"A No, I don't think the purpose of that was to eliminate anyone that had a right to any benefits from the fund none whatsoever.

"Q But it would eliminate them from benefits?

"A I am not certain that is correct. I would have to examine that carefully to say that.

"Q That was a very important resolution, was it not, Mr. Schmidt?

"A They are all important, sir.

"Q Yes, sir. And there are hundreds and thousands of these small mines across the country where unemployed miners have got together and formed little companies?

"A Yes, sir.

[4003] "Q And they are each part of the management because it is a partnership and they go into the ground and open up small mines. Now this resolution would eliminate all those people from eligibility?

"A I don't believe that I can answer you on that question. I just at the moment can't say. I don't know. I would like to, if I may, make a comment as to the number of small mines. I don't believe that it is in the thousands. It is in the hundreds. I think there are a total, according

to the last count, about 3,000 financial entities in the coal industry.

"Q We have quite a few of those little mines here in Tennessee.

"A I have heard that you do.

"Q Yes, sir. Now, it is true then, Mr. Schmidt, that the bulk of the period of your meetings as trustees is taken up with discussion of lawsuits?

"A Discussion of what?

"Q Of lawsuits.

"A Lawsuits, part of the time. Sometimes it may be as much as 50 per cent of the time; sometimes it is as little as 15 or 20 per cent.

"Q I believe you said a while ago that lawsuits did take up a good part of your meetings?

"A I think 50 per cent of the time is a large [4004] part of the time. Now, as percentage, I don't know the exact per cent, but it is a large part of the time.

"Q The fund has a policy of never settling any of these lawsuits?

"A Oh, the fund has been definite in policy and in obligation to settle all of these lawsuits and does.

"Q By collecting the last cent?

"A By collecting as much as they are entitled to.

"Q Which is the last cent under the contract?

"A Correct.

"Q That policy is pursued even though the company ends up in receivership or bankruptcy?

"A That is correct.

"Q And even though the employees of that company who have mined the coal, that have been paid the royalties to the fund before that, are then thrown out of the industry and lose their eligibility under the fund?

"A That is correct.

"Q Mr. Schmidt, you mentioned a while ago hearing operators say things about deals having been made. What kind of deals?

"A Well, the general statement, most often it was a casual statement, unsupported by facts as far as I am convinced, but statements along this line:

"That the fund does not attempt soon enough [4005] to collect the royalties, that they wait until all of the other bills are paid, and they hold up on royalty payments, knowing, so the rumor is and so the statement is, that the fund will make a settlement with them on a reduced basis, and I have repeatedly interrogated Mr. Mitch and Mrs. Roche as to the practice of the administrator and of the administration of the fund as to that practice, and I am — and I have also interrogated the operators in detail — and I am convinced first that no such practice is indulged in and, secondly, I have yet to receive one shred of evidence from any operator friends that this is a fact.

"Q It is true that the lawsuits are prosecuted to the ultimate end?

"A They are determined to the ultimate end.

"Q Mr. Schmidt, do you have many instances such as is true in this case where the amount sought to be collected in these lawsuits amounts to more than the profits, the entire profits of the company over its entire life?

"A The profits of the company are never discussed at our trustees' meeting, and I have no knowledge of the profits.

"Q Do you have knowledge of the fact that pensioners have been organized into union activities?

"A Will you please repeat that question?

"Q Do you have knowledge of the fact that pensioners receiving pensions from the fund have been organized

[4006] into union activities?

"A No, I have no knowledge of that."

REDIRECT EXAMINATION

(Mr. Combs read the questions and Mr. Rayson the answers.)

"Q One question, Mr. Schmidt. You spoke about the fact you did not receive any salary from the trust. Can you tell us whether Mr. Lewis receives any salary as a trustee, receives any salary from the trust as a trustee?

"A Mr. Lewis does not receive a salary from the trust as a trustee."

* * *

GEORGE H. LOVE

[4027] a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q Would you give your name to the Court, please?

A My name is George H. Love.

Q What is your residence, Mr. Love?

A Pittsburgh, Pennsylvania.

Q Are you here under subpoena?

A I am here under subpoena.

[4028] Q You are employed by the Consolidation Coal Company?

A I am chairman of the board of the Consolidation Coal Company.

Q And the Consolidation Coal Company is alleged to be a co-conspirator in this case?

A I understand so, that is the reason when I got the subpoena I was very glad to have a chance to come down here and maybe set the record straight as far as the Consolidation Coal Company is concerned.

Q What is your present position with the Consolidation Coal Company?

A Chairman of the board.

Q How long have you held that position?

A I was president when the company was first formed in '45 and I think about '46 or '7, somewhere in that neighborhood, I became chairman of the board.

Q Have you held other positions with that company?

A Just those two.

Q How long have you been with the company, when did you come with it?

A I came with the predecessor, which was Consolidation Coal Company, in 1943, and Consolidation joined with Pittsburgh Coal Company to form at that time a company called Pittsburgh Consolidation Coal Company in 1945. That company later changed its name to [4029] just Consolidation Coal Company.

Q What has been your general experience in the coal industry, Mr. Love?

A I came to Pittsburgh—a small coal company called Union Colleries Company in 1926 as an assistant to the president. Some seven years later, in 1933, I became president of that small company and went on from there a little bit later to become with Consolidation Coal Company, ten years later, so I have spent my business life, for all practical purposes, in the coal business.

Q Now, in 1949 and in 1950 contract negotiations with the United Mine Workers, were you the chief nego-

tiator for the Northern and Midwestern commercial operators?

A I think that is a fair statement, yes. I was on the negotiating team and that team decided that I should be their spokesman during those arduous negotiations.

Q Do you recall some of the principal issues in those negotiations at that time?

A Well, the union sought to increase wages, obviously they wanted to increase the amount paid into the Welfare Fund from the then 20 cents per ton, they sought changes in the administration of the fund, I think they were the prime issues.

Q Now, what was the position of the operators with reference to increasing the wages and to increase
[4030] the payment to the Welfare Fund, what positions did you take as the spokesman for the operators?

A We took a very strenuous position against changing wages. We thought we were paying as high wages as was being paid in the industry. We felt the coal industry was beset with more than normal competition in the form of oil and gas and we felt that the right way to keep the highest number of people employed in the industry was to let the wages stay where they were, and that continued to be our position throughout those negotiations.

Q Now, do you recall just what the wage increase was in the 1950 contract?

A I feel confident it was 70 cents a day.

Q And do you recall what the increase in the Welfare Fund from the 20 cents was?

A I think it went to 30 cents, sir.

Q Do you recall that there were other issues besides the increase in wages and Welfare Fund in these negotiations?

A Well, during these rather arduous negotiations that went on some six months, there were periods when

the union, or at least the men only appeared to work three days a week or for a while they didn't appear at all, so there was a clause in that contract called the "willing and able" clause, and under that clause the miners interpreted that they could decide how many days and how
[4031] many hours they worked and the operators, of course, during that period kept their mines open if the men appeared, so it was a very expensive trying time for all of us, including our customers.

Q Now, this "able and willing" clause, was there some other clause the operators had been complaining about?

A They had a memorial period, that you could have a memorial period theoretically, at least the reasons given for the clause was to bring safety features closer to the operators and men alike, but the memorial clause, as well as the "willing and able" clause, seemed to us to be being abused during that period.

Q Well, now, some time during those negotiations did the operators seek relief through injunctive procedure before the National Labor Relations Board and the courts?

A That is correct, and I think they succeeded in getting an injunction against those particular clauses.

Q That is, against the "willing and able"?

A "Willing and able" clause and the memorial clause in the form it was then in, indefinite memorial clause, I think that is right.

Q Now, did you have some arguments with the union with reference to the so-called union security clause they had in their contract?

A That is correct. I can't remember the
[4032] details of it except I remember we argued about everything.

Q And was that part of your legal action that you

took to get relief?

A That is correct.

Q Now, what had been the operators' experiences in the administration of these clauses even before these negotiations took place, that is, the "able and willing" clause and the memorial clause?

A Well, I think it meant for, shall we say, unstable relations at the individual mines, and if there was a dispute locally it was fairly simple for the men to stay away from the mine on the basis that they weren't willing and able at that time to come to work and, therefore, I think the clauses were bad for the operators and bad for the miners, very frankly, and I think that the mines worked less days and the miners received less pay as a result of those clauses.

Q Now, having sought injunctive relief, I believe you stated that you got the relief you asked for, was the union restricted then from the demanding of those clauses as a part of the 1950 contract?

A Well, the "willing and able" clause was eliminated. The memorial period was limited, as I recollect, to five days in a given year. I am not quite certain of that, but I think that is right.

Q Now, then as I understand your testimony, [4033] these particular clauses were not an issue when the contract was finally signed because the court had already granted the relief you wanted?

A Well, I think they were still somewhat of an issue. The fact that they had been ruled on by the National Labor Relations Board from their viewpoint didn't mean that they couldn't be, continue to be an issue and continued to be argued in the courts, so we were very glad and thought we had won something at least when we had those clauses eliminated.

Q Now, I think to go to the point that these 1949 and 1950 negotiations, you said they extended over somewhat of a lengthy period of time, from about June until March, is that correct?

A That is about right, yes, sir.

Q Now, during that time you mentioned something a while ago about the 3-day work week. Now, how did that 3-day work week come about, do you recall? Was that by agreement with the operators or was it imposed by the union or just how did it occur?

A It certainly wasn't by agreement with the operators. We despised it, we hated it. It was imposed on us.

Now, how the mechanics of working it went, I don't know, but it was a heavy imposition. You can't [4034] have a coal mine that is ready to produce coal five days a week and cut it down to three with the narrow margin that then existed in coal and have it be a profitable venture, so it was a hardship and a great one.

Q Now, did the Mine Workers use this as a bargaining tactic during this period of time when you were bargaining for the contract, or did they demand that they be incorporated in the contract in 1950, entered in the contract as a contractual provision? Would you just explain that, please?

A Well, I think it was mainly a harassment procedure. I don't recall the Mine Workers ever asking to have a 3-day work week as a part of the contract. I think it was a matter of harassment and as a means of harassment it was quite successful.

Q Mr. Love, with reference to the question about mechanizing the coal mines, that is, generally in the industry, was the question of mechanization an issue in the negotiations in 1949 and '50?

A No, it was not an issue. Bear in mind that some

of these coal mines, like the little company I worked for, Union Colliers, started to mechanize in 1928, so mechanization was nothing new to the coal industry, just as we started to undercut rather than have it dug out with picks, that was a step in mechanization, so mechanization was something that was going on and should have gone on and it has in every other industry all through this
[4035] period.

Q Did it not become an issue in your negotiations?

A No, sir.

Q Now, in the 1951 negotiations, do you remember whether or not an agreement was reached on wage increase before the expiration date of the 1950 contract?

A I think the 1950 contract made in March of this year, which would have extended some two and a half years, but there was a right to re-open in March or April of '51, and the union informed us that they planned to re-open it and, if you will recall, it was when we were entering into the strenuous part of the Korean War and we were all concerned in the coal industry, as well as other industries, with the ability to hold onto men, so we granted, when we were informed that the union planned to re-open the contract, we granted an increase, as was being done, I think, on somewhat the same basis by various other major industries, like steel and copper and so forth.

Q And was this done in the automobile industry, too, or do you recall?

A Well, I didn't know much about the automobile business then.

Q No.

A I don't know much about it—well——

Q Now, do you remember what the wage increase was in 1951?

[4036] A A dollar, I feel quite confident it was a dollar and a half per day.

Q Mr. Love, is the Consolidation Coal Company a member of an organization known as the Bituminous Coal Operators' Association?

A Yes, sir.

Q Now, is that organization generally referred to by its initials as BCOA?

A I think so.

Q Now, when was BCOA formed, do you recall?

A Yes, it was formed in 1950.

Q Did the formation of this BCOA result from or have any connection with the negotiations leading up to the 1950 contract?

A Well, I feel the fact that we had had such a hard time in the negotiations in '49 and '50 that everybody in coal thought we ought to find some better way, some more efficient way to carry on these negotiations rather than having some operator try to do it on a part-time basis, such as I tried to do.

We had had, as you may recall, we had had a spokesman for the Northern part of the industry, Mr. Charles O'Neal, who died in '48, George Campbell, who was a spokesman for Illinois and Indiana, a very able negotiator, he died in '49. His job fell to me in '49 and '50 [4037] and I think everybody saw how badly it was done and decided we better change and have somebody on a 12-month basis to carry on these negotiations, available at all times to help on local disputes and local issues rather than do it in the haphazard way we felt we were doing it.

Q Now, am I to understand that Mr. O'Neal and Mr. Campbell also were only part-time negotiators and they were —

A (Interposing) That's right. They were employed by coal companies, had their regular duties to do with their coal companies in addition to being negotiators.

Q Now, did the formation of this BCOA come about by any agreement between you or any other representative of this Northern coal operator group, to your knowledge, by agreement with the United Mine Workers, did they have anything to do with the formation of BCOA?

A They had absolutely nothing to do with it. This was an effort by the operators in these various districts to try to find a more efficient way of dealing with a very strong union.

Q Were you trying to find somebody that could kind of match Mr. Lewis and some of his——

A (Interposing) Having tried myself I was trying to find somebody, that's right.

Q Now, is the BCOA incorporated or is [4038] it unincorporated?

A Unincorporated.

Q Were you, as an officer of the Consolidation Coal Company, active in BCOA's formation?

A Yes. Having just been spokesman for the operators in these negotiations that I just finished, I believe I was probably more active in its formation than anyone else.

Q Now——

A (Interposing) And we attempted to get as many members as we could.

Q Did you, after it was organized, when it came into being, did you become an officer of the BCOA?

A Yes, I think we—until we found a permanent chairman that I took the job as chairman for a few months.

Q Have you continued to be such an officer?

A No, no. I continued as a director, I think, for quite a while. I no longer have any connection with it.

Q Who was your successor in that, do you recall who succeeded you?

A We had decided we would try to get a man in the operators' side with the most knowledge of labor negotiations and the industry generally and we had a—I had approached Harry Moses with the thought of this thing way back in 1949 and we finally succeeded in getting him to take the job and I think he came in October, 1950, as I recall.

[4039] Q What was Mr. Moses' background in the coal industry?

A Mr. Moses, as his father, had been active in the coal industry all of his life and at the time we succeeded in getting him to take this job he was president of the H. C. Frick Coke Company, which was a mining subsidiary of the United States Steel Corporation, which company, incidentally, mined about as much coal as any other commercial or any other kind of operator at that time.

He had carried on negotiations generally representing the captives with the United Mine Workers. His father had been active in the coal business, he had a complete background and we thought he was the best person to do this job.

Q Did Mr. Moses have some eminence as a safety man or safety advocate in the coal industry?

A I think his record is outstanding in that regard.

Q Is Mr. Moses deceased now?

A He died in 1956. In other words, he was on this job almost six years, as I recall.

Q And who succeeded Mr. Moses?

A Edward Fox. Edward Fox was an anthracite operator of eminence, prominence, also skilled in, we felt, in negotiations.

Q Now, to get back just a minute at the time BCOA was formed, was there another association in the coal

[4040] industry known as the Southern Coal Producers' Association?

A Yes. This was formed primarily, as I recollect, of operators in the southern part of West Virginia, Southern Virginia, Kentucky, and they had hired a man on a full-time basis, too, and that organization was in existence before we started BCOA.

Q Now, Mr. Love, about what percentage of tonnage-wise did the BCOA represent in the coal industry when it was formed?

A I think we had approximately 50 per cent or a little bit more of the tonnage. I do remember the figure that we had some 262 individual companies and I also recall that very recently 130 of those companies, or half of them for all practical purposes, were companies that mined less than 100,000 tons a year, so it was made up of large and small operators, operators in Illinois, Pennsylvania, Northern West Virginia, Virginia, and captive operators.

Q Do you recall just the names of the associations that became members at the time it was formed?

A Well, at the beginning, Illinois and Indiana Operators' Associations were members, Ohio Operators' Association, the Panhandle District of West Virginia, Northern West Virginia Coal Operators, Western Pennsylvania Operators' Association, Central Pennsylvania Association and Virginia, as I recall, and then in addition there were at least 10 or 15 individual companies that were

[4041] not members of any local association.

Q Is the Bituminous Coal Operators' Association open to any coal operator?

A Yes, either get in or get out.

Q Is there any limitation on their eligibility with reference to size or production that they may have?

A No.

Q Mr. Love, would you briefly state the pattern of negotiations during the 1940s up to the 1950 negotiations what kind of a time did you have in the industry with the collective bargaining situation?

A Well, I feel the method we used was one that made for difficult negotiations. Generally speaking, our negotiations were carried on in sort of a fish-bowl situation with headlines and great flairs of publicity. The operators by districts would get together and appoint a spokesman for that district or a negotiator for that district. Those negotiators would get together and appoint one or two of their members as the chief negotiator and the fact that you started out with a public demonstration, with the miners there in this case making demands publicly, and the operators forced to take the other position. I think both sides got themselves frozen into positions which made it hard to retreat from those positions in negotiations and as a result it was in those [4042] unfortunate '40s that we had strike after strike. We had five seizures by the Federal Government. we had the Federal Government take over the operation of the mines and then work out generally their own agreement with the Mine Workers as to wages and so forth.

So it was a very unfortunate period and it was a period when coal was really feeling the full blunt of competition with oil and gas, so I think coal as an industry was hurt during that decade.

Q Now, is the coal industry, is it a very concentrated industry? How would you describe the industry itself with reference to the companies in the coal industry?

A Well, I think that it's as fragmentary an industry as there is in industries, not as fragmentary certainly as farming but almost next door to it. There are thousands

of us. The two companies that went together to form our present Consolidation Coal Company in the '40s were the largest companies in the coal industry, but they were both terribly small and both financially embarrassed, they were both hard pressed in every respect, but they were the largest, but they were terribly small, and to put the thing in proper perspective for you, the whole industry, the whole coal industry, is less than half the size of several oil companies, the whole thing, and none of us at that time represented more than 6 or 7 per cent of that industry, so you are talking about an industry
[4043] made up of many small operators scattered all over the country geographically.

Q Now, when you negotiated this 1950 contract, you were resisting these wage demands. What was the impact of that wage scale, the increases of wages on your companies and like companies?

A Well, it was, we felt at that time was a harmful situation because it did increase costs and we were finding, we were learning we weren't competing just with coal, we were competing with oil and gas and those things were being—those two other energy sources could be priced at less than we could sell our coal for even before the wage advance, so we were of the impression that there should have been no wage increase at that time, but we lost in our negotiations.

Q What did you do with reference to trying to cut costs after the wage scale went into effect, did you do anything, your companies or any of the rest of them?

A Well, during the negotiations we had a reduced—during these long arduous negotiations we had to reduce salaries of our people, we had to reduce dividends paid to our stockholders, and we decided that we had to some way or another pull in our belts and find a way to mine

coal just as cheaply.

We were already, as practically every progressive company were doing, we were already well along [4044] in mechanization of some sort or another, but we had to do it more efficiently and, fortunately we did just that, we found ways of over-coming some of the effects of the wage advances of '50 and '51.

Q Now, Mr. Love, to get back just one minute at the time that you were spokesman for this Northern group of operators in 1950, when the time came when you negotiated this contract in March, did you have a party to execute that contract or did you have to go back to your group that you represented to get authority to execute the contract?

A Oh, no, I didn't have authority to exercise, I mean to finalize this agreement. I had to take it back to the various spokesmen for the various districts and within those districts the individual companies could withdraw, and some did, so it was a matter of my coming back to my fellow negotiators and saying, "I feel that this is the best we can do under the circumstances."

And, of course, some of them, most of them agreed with me and most of the companies accepted that agreement.

Q You mean that they had a right, even though you had executed the contract, to withdraw and not become a party?

A That's right. I only executed for the districts that gave me authority and there were one or two of those, but any individual company had the right to with- [4045] draw from their associations if they chose to.

Q What about the BCOA now, are you still, your company still a member of BCOA?

A Yes, yes.

Q Now, under the existing rules of applying to BCOA

with reference to their bargaining, is that still the situation?

A As I understand it, if BCOA negotiates a contract it doesn't bind any particular company or district, the contract is sent back to them and they approve it or withdraw from the association and they all have that freedom, of course.

Q Now, was that true during the time that Mr. Fox was negotiating with Mr. Lewis?

A That's right.

Q After the formation?

A Yes.

Q Did he have to come back and get the authority?

A He could report back that this is his recommendation and if any district or any individual company felt that that wasn't the proper road they could withdraw.

Q Did he keep his constituent company, like you, did he keep you informed from time to time on the nature of the negotiations and what the demands were?

A Certainly, that was part of his obligation.

[4046] Q Now, you have described the negotiations that went on up to the 1950 negotiations, the execution of the contract.

Now, after 1950 what was the pattern of bargaining then, what was the situation after 1950 when BCOA started bargaining for you, did you have real issues between the union?

A Certainly we had issues constantly with the union, but they weren't publicly thrown out in a big large gathering of miners and operators, they were negotiated between the parties, they were done quietly, they were done with reasonable efficiency, and the whole idea of this operators association accomplished its purpose, in one sense, that we didn't have great big general strikes in the industry during that period.

Q Now, did the union get everything it asked for when they——

A (Interposing) Heavens, no, we wouldn't be he if they had.

Q Did they get the wage increases they asked for

A No. The wage increases were granted during the period several different times. I do recall that the were periods when other industries were getting higher increases than the miners because the United Mine Wor realized that coal was a very competitive situation, so from there—I think this is right, from '56 on [4047] to '60, in that period, the United Mine Workers had fewer advances because of this competitive situation than some other industries, than most other major industries.

Q Now, Mr. Love, did you ever enter into any ki of agreement during the negotiations at any time in 1949 or '50, or contemporaneously with the signing of the 195 contract with Mr. John L. Lewis, the president of the organization, or with any other representative of the Uni Mine Workers, with respect to limiting the number of operators in the coal industry or to eliminate any coal operators, did you ever——

A (Interposing) I certainly did not, and let me go just one step further in that, in that regard. You can't have, you are not going to have a healthy coal industry if small operators are passing out of the pictures or larg operators. You can't, you cannot be successful in this business unless your neighbors are, so any talk of trying to eliminate other operators is completely wrong and erroneous and has no place in any thinking that I have ever found my fellow operators to do.

Q Now, to your knowledge in these 1949 and 1950 negotiations, or any time thereafter, has any other emplo

or any representative, to your knowledge, entered into any agreement or understanding with the Mine Workers or Mine Worker representatives to limit the number of coal operators or to eliminate any coal operator
[4048] in the industry?

A Not to my knowledge.

Q Did you, during the 1949-1950 negotiations leading to the signing of the National Bituminous Wage Agreement, or thereafter, ever agree with John L. Lewis, the president of the union, or any other representative of the Mine Workers, or of a representative of any other coal company, that the price of coal would be controlled, that you would try to control the prices and markets of the coal?

A To the very best of my knowledge neither I or anybody connected with our company or our districts has entered into any arrangement with the United Mine Workers or anybody else to have anything to do with the price.

Q Does the operator control these prices?

A Certainly, insofar as competition will allow him.

Q Did you, or any other employer, or employer representative, to your knowledge, reach any side agreement or understanding with the United Mine Workers, or any United Mine Workers representative, in 1950, or thereafter, that the terms of the labor agreement reached between you, that that would be the National Bituminous Coal Wage Agreement of 1950, would be imposed by the union, that is, the United Mine Workers, on other employees in other bargaining units other than the ones that they were bargaining with?

A The answer to that question is a very
[4049] emphatic no, but I would like to say this, that from the past pattern of the United Mine Workers of having one general wage scale, we thought that our

competitors would have to pay something resembling the same wages that we were being forced to pay.

Q That came from your knowledge of the bargaining tactics?

A But certainly no agreement to that effect.

Q Did you ever ask the Mine Workers to agree to any such imposition?

A No, sir, because I knew what the answer would be.

Q Now, Mr. Love, on March the 5th, 1950, after the signing of the 1950 agreement, I believe you stated publicly, and I quote, "This two and one-half year contract gives the industry its first real opportunity for stability in the last decade."

To what were you referring when you used the term "stability of the coal industry", what were you talking about?

A The stability means we had—it's quite clear—the stability meant to me that the men would stay in the mines, and we would be able to stabilize our rate of shipments we would make to our customers and a customer could count on a stable coal supply to take care of his needs and he wouldn't have to turn to oil and gas. That to me meant having a stable industry that could ship,
[4050] men would continue to work without interruption and in that way that coal could hold its own in some markets with oil and gas.

Q And you had reference then to the question of the working time of the men, the employees?

A Certainly.

MR. COMBS: Your witness.

CROSS-EXAMINATION

BY MR. ROWNTREE:

Q Mr. Love, when the 3-day work weeks were going

on and the strikes and so forth in '49 and '50, the United Mine Workers contract had been canceled by that time, had it not?

A I think so, but I can't answer that specifically.

Q So these injunctions about "willing and able" clause and memorial periods were actually directed at the proposals of the United Mine Workers for a new contract including these terms in it?

A I think that is right.

Q That is correct. And actually the working time in the industry was a bargainable issue, was it not, as to whether it should be five days a week, six days a week or three days a week, that would have been a bargainable issue?

A It could have been, it could have been but it wasn't.

[4051] Q Now, you say that you have no connection personally with BCOA at this time?

A I think that's right. Our company is a member but I have no direct connection.

Q Are you in a position to break down some of the number of companies represented by BCOA at this time?

A No.

Q With respect to size and so forth?

A No.

Q Now, you state that the operators who are members of BCOA after the contract terms were pretty well agreed upon by Mr. Fox and Mr. Moody, I mean Mr. Boyle, that any member of the BCOA could withdraw and refuse to sign the contract?

A (Witness moves head up and down.)

Q Can you describe what would happen to that member if the predominant tonnage in the country did go along and sign the contract?

MR. COMBS: Now, I object to that question, if the Court please. That's an argument, an implication that something would happen to a member after he resigned from the coal association. There is no evidence of that character and I think that question is completely argumentative.

THE COURT: Well, if the question is directed toward his knowledge of any operator who did withdraw, I will allow him to answer; if the question is calling for his speculation as to what might happen, I would [4052] sustain the objection.

MR. COMBS: I took it that that was the form of counsel's question. He was very general about it.

Q Mr. Love, do you have any knowledge of what happened to any particular member of the association, of the BCOA, that did withdraw under those circumstances?

A I have no knowledge.

Q Do you recall of any withdrawing under those circumstances?

A I don't think so; I don't think so. I think that you will find that in '51 local Illinois and Indiana districts withdrew from the organization and never came back. That's the only thing I remember.

Q Was that under the circumstance I described after the terms were pretty well negotiated?

A No, but during negotiations I feel that they withdrew.

Q And they ultimately signed the same contract?

A I don't know that.

Q Well, do you know of any contract in those Illinois or Indiana fields different?

A There was some differences but I don't know what they were, Mr. Rowntree.

Q You mean——

A (Interposing) In detail I don't know what they

[4053] were.

Q Is this after 1950? Was this after 1950?

A I think that was during 1951.

Q And did they obtain some different kind of contract from 1951?

A I don't know the details of their contract.

Q The National Bituminous Coal Wage Agreement?

A I don't know the details of their contract. I would imagine from my own knowledge that they were pretty much the same wages and hours.

Q Well, of course, the National Bituminous Coal Wage Agreement of 1950 and later years is based upon situations in different districts as they existed in 1950, is that not true?

A I don't get your question.

Q Particularly talking about the wage rate.

A Yes.

Q The 1950 National Bituminous Coal Wage Agreement, and the later amendments thereto, are all founded upon a situation existing with respect to wages in different districts back in 1950.

A As far as I know that is right, as far as I know.

Q Now, in the Indiana and Illinois fields, had there been any change in the National Bituminous Coal Wage Agreement terms negotiated by BCOA with respect

[4054] to those particular fields, to your knowledge?

A I don't know; I don't know. I haven't that detailed knowledge, Mr. Rowntree.

Q I believe you have testified that there are a great number of coal companies in the industry.

A That's right.

Q It is an industry of easy access, is that right?

A Both ways.

Q Coming and going?

A Huh?

Q Coming and going, in and out?

A (Witness moves head up and down.)

Q Is it not true, Mr. Love, that there were discussions in these bargaining sessions about the 3-day work weeks of 1949 and '50?

A We deplored them and complained publicly and every place else.

Q And were not these discussions concerning the 3-day work week in the industry founded upon the proposition that there was a greater supply of coal than the market could absorb at that time?

A Not on our side. We wanted a right to work our mines as many days as we had orders for them. The fact that there was no supply of coal had nothing to do with our argument there as to the rates that we had [4055] to work our mines or the number of days we could work them.

Q Well, is it not true that the discussions centered upon that fact in the industry when you were talking about the 3-day work week in these negotiations?

A Just get this straight, Mr. Rowntree, I kept insisting from the very beginning that anything that increased the cost of coal would be a detriment to the coal operators and the men that worked in the mine and, therefore, any restriction of worktime would tend to raise costs and that was my chief concern, that I could compete with the coal I was going to mine with our employees and keep the mines going and there was a matter of cost there of oversupply, sure, oversupply in lots of industries but, nevertheless, the main, our main concern was with the costs.

Q Do you recall the deposition we took in Pittsburgh in another case back in 1960, I believe?

A Yes; yes.

Q Do you recall this question and answer in that:

"Question: My question is: Do you recall that this stabilization was a matter discussed at these conferences in 1949 and '50?

"Answer: During the 1949 and 1950 conferences a discussion of shorter work weeks because obviously there is a greater supply of coal or a greater ability to produce coal than the market, and the operators continued
[4056] and unrelentingly resisted any interference with their right to run their mines as many days as they saw fit."

A That's just exactly what I have just said, I think.

Q So this discussion did have a foundation based upon the supply of coal being greater than the market?

A I don't agree with that at all, sir. I just said that certainly in many industries that at certain times of the year there is overcapacity. There was in the coal mining industry, but that doesn't—the main point here is cost, and the right to operate your mine and get as low a cost as possible so you can compete. The matter of oversupply wasn't a matter of negotiation. Certainly we knew the United Mine Workers could publicly try to justify their position by saying there was an oversupply and that three or four days was enough to take care of the needs of the country, but that isn't true. It wasn't a matter of just tons, it was the matter of the cost of the ton and I would like to get that point across to you.

Q Well, this answer was correct, though?

A I don't argue with it.

Q Now, I believe you commented that one of the three major items at issue in these sessions was the administration of the Welfare Fund, is that correct?

A Correct.

[4057] Q Is it not true that the United Mine Workers

were attempting to name the operator representative and the public or neutral representative on the Welfare Fund during those negotiations?

A They were certainly, as I recall they certainly insisted on the right to name the public member. There was some discussion about the operators' member, as I recollect.

Q Now, Mr. Love, is it not true that the situation that arose after the Jacksonville scale of the 1920s was a matter of prime concern in your mind during those negotiations?

MR. COMBS: If the Court please, now, the witness did not go into that in his direct and if counsel wants to take him as his witness I have no objection, but I do object to it unless he takes him as his witness. I did not ask Mr. Love anything about the Jacksonville agreement or anything near that time.

MR. ROWNTREE: If your Honor please, the witness has covered the field of what went on in these negotiations.

THE COURT: You may state your question.

MR. COMBS: That's 25 years subsequent to the time counsel is asking about.

THE COURT: You may state your question.

Q Mr. Love, is it not true that you were concerned about what would result from giving too great an increase in this contract that you were negotiating in this [4058] period with respect to the effect on eliminating companies under the contract, companies breaking also from the contract and going non-union and putting coal on the market at non-union wages?

A First you asked if I was against any wage increase of any consequence and I answer yes. Next, you left with the point, was that one of my worries, the fact that it might cause more operators to become non-union, and I will

answer that yes. I thought that if wages went up materially it would permit large and small operators, if they couldn't pay that wage scale, to go to their men and perhaps get around being semi-non-union or non-union and that was a concern from our point of view because it would mean competitors paying less than we were paying. I didn't like that, if there was any way around it.

Q So you had a desire and a purpose to get around any competitor paying a less wage?

A No, no.

Q Than you?

MR. COMBS: I object to the form of that question as argumentative.

THE COURT: Well, I will allow the witness to state his own answer.

A What was the question again?

Q Did you have a desire and a purpose to
[4059] get around the possibility of any competitor in the coal industry paying a lesser wage than you paid?

A I don't know what you mean by "purpose", but I will say I had a desire, I had a desire that wages of people that I was competing with would be somewhere in the neighborhood of the wages I was paying. That's a normal situation, that's true in any industry, in the automobile industry, the steel industry, or any other industry. You don't want to be in a position, if you can avoid it, where your neighbor has a direct advantage over you.

Q Would this be true regardless of the mode of production of your neighbor or the ability of the neighbor to pay the same wage that you could pay?

A That isn't—let me answer it, I think I answered it before, that you don't want your neighbor, if you can avoid it, to have any advantage over you. You want to be

able to compete freely and easy with him and, by golly, you don't want him to have a lower wage scale than you if you can avoid it.

Q Now, it is true, Mr. Love, is it not, that some of these companies that you were representing in 1949 and '50 did not have the same ability as Consolidation Coal Company to pay the increases?

A Mr. Rowntree, I think some of the companies I represented had an ability far better than ours
[4060] to pay the increases, and some of those companies are very small companies.

I think I should like to go a little bit further with you in that regard. Bear in mind that there were small companies that had one mine and that mine could be a very efficient mine with good conditions and there were large companies that had 20 mines and they might all have inferior conditions to the man that had one mine, so it was a matter of what Nature gave you, where you were, and that is the advantage one company has over another.

Now, there are companies, if you run into a situation where wages are high and you have 20 bad mines you have 20 times as much trouble as the fellow with one mine. So all this talk about small and large companies I don't understand.

Some large companies had efficient mines and some large companies had inefficient mines, some small operators are the most efficient operators I know.

Q Well, you said that it was a matter of what Nature gave you. There are tremendous differences in the seams of coal?

A That is correct.

Q Around the country?

A In our own mines, in the same mine you will have it.

[4061] Q And these conditions affect the productivity of these mines and the cost of production?

A That is correct.

Q And the ability to mechanize, too?

A I don't know that, up to date we have found we can mechanize practically any section of any of our mines to some extent.

Q To some extent?

A Yes.

Q And is it not true that in 1949 and '50, as principal spokesman for the Northern Conference, Northern Operators, you were representing hundreds of companies of all scales, sizes, shapes and form?

A That is correct.

Q And that during those negotiations you did not desire, and made it a point during the stages of those negotiations not to do something that Consolidation Coal Company could do but many of these other companies could not do?

A I felt the whole coal industry couldn't stand any cost increase, the whole coal industry, that was done through my position, certainly I represented the small operator and large operator. I represented the large operator that had poor conditions underground as well as small ones that may have had bad conditions.

[4062] All you are trying to do is keep the cost of coal down as low as you can.

Q Do you recall these words that you expressed during that time, "We have a tremendous responsibility here not to do something that Pittsburgh Consolidation can do but something which these hundreds of other operators can't afford." Do you recall that?

A I do.

Q What did you mean by that?

A Just what it says, just exactly what it says. If you are representing a great many people who, who do you have your mind and heart on? The fellow that is going to be hardest on you, that is going to be hard on you, if there is anybody going to be harder on you and you represent them, that's the one that is foremost in your mind.

Q All right, sir. Now, has that been the policy of the BCOA since that date?

A I think they have had the same policy that all of us negotiated there through the '40s and the '50s, that is, to keep the cost of coal down, keep the cost of coal down, that's all we had, there's no other policy. That is your job as negotiator, to keep the cost of your product down so your products can be competitive. It isn't a price of trying to help this district or that district or this operator or that operator, your job is just to negotiate as
[4063] fully as you can, try to convince the United Mine Workers or whoever you are negotiating with that they, the United Mine Workers is hurt by increasing the cost and that has been, as far as I know, all of my tries in the coal industry and the same with BCOA. Our job has been for 20 years of my life that I was trying to help these negotiations was to keep the cost of coal down and come out of these arrangements with—these meetings with the Mine Workers with as low an increase in costs as possible, and that was our only consideration.

Q Of course, Mr. Moses and Mr. Fox have had the primary burden of negotiations?

A That's right. I am sure they felt the same way.

Q Of course, the feeling you have may or may not be true, and is it not true that Mr. Fox and Mr. Moses have dealt directly with the principal representatives of the union on many of these negotiations in working out the details?

A That's right.

Q And their job was to represent the membership of BCOA?

A Their job was to represent the membership and come out of any meeting with the miners with as low an increase in cost as possible.

Q For the members of BCOA?

[4064] A For the members, for the people they represented, right.

Q And they weren't representing the operators in the Southeastern Tennessee field, were they?

A I think not.

Q And they had no concern as to the abilities of the operators in the Southeastern Tennessee field to comply with the contract?

MR. COMBS: I object to that question, the form of the question "had no concern about this field", that is purely argumentative.

THE COURT: I will sustain the objection.

Q Do you recall this full statement you made to the press after the signing of the 1950 contract, Mr. Love?

A I don't recall it. If you read it I may recall it.

Q "We have had a good fight but we are all glad it is over. This two and a half year contract gives the industry its first real opportunity for stability in the last decade. Both the union and the operators made concessions. The operators definitely established the right to control production in their mining facilities. The union asked for a cooperative administration of the Welfare Fund and we are giving it to them. We will help every way possible to make this huge fund a definite credit and bene-

[4065] fit to the industry, however, the responsibility is squarely on the shoulders of the union and if it fails the public and ourselves will look directly at the

union."

Did that express your general understanding of what the 1950 contract was to accomplish?

A I think that is a statement I made and I still stand by it, particularly the part that says, "I am happy it is over."

Q Mr. Love, you did come into a period of calm and peace in the labor field in the following years, is that not true?

A Yes, the 1950s were quite a contrast to the 40s.

Q I will ask you if this statement is correct from your prospectus issued in 1956, in October.

MR. KRAMER: Is that a stockholder notice or something, what is that?

MR. ROWNTREE: This is a 1956 prospectus on the issue of ——

MR. RAYSON: (Interposing) If the Court please, this document is not in evidence and I would request that counsel allow the witness to look at it so he will know what he is talking about and allow him to examine the whole document.

A Yes, sir.

Q Would you read that please, sir?

[4066] A Do you want me to read it?

Q The marked portion.

A "There has been no general strike in the bituminous coal industry since March, 1950. The company has experienced no material work stoppages or unusual labor difficulty since that date, with the exception of an unauthorized work stoppage at its mines in Northeastern West Virginia during portions of the months of April, May and June, 1956, which decreased the company's production by approximately 850,000 during that period.

"Effective October, 1956, a new wage agreement was

signed by the United Mine Workers of America. This agreement provides for an immediate wage increase of $1.20 per day and an additional increase effective April 1, 1957, of 80 cents per day, as well as for certain fringe benefits. The new agreement is expressly not subject to termination prior to September 30, 1957, but as of that date may be terminated by either party on 60 days notice. To cover the increased labor costs arising from the October 1st wage increase and accrued increase in material and supply cost, the company has made an increase of approximately 40 cents per ton in its prices. Other companies have also increased their coal prices. While the increases have been in effect too short a period to permit a definite statement as to their ultimate effect on the position of the coal industry, the company [4067] does not believe that under presently existing conditions they will materially affect its ability to market its product."

Q Thank you, sir. Mr. Love, since that time Consolidation Coal Company has acquired another coal company called Truax-Traer, is that not true?

A That is correct.

Q Was that not one of the larger companies in the country?

A Truax-Traer?

Q In the industry?

A It's a relatively small company in Illinois, relatively small.

Q What rank did it hold in the industry, would you state?

A I don't know. It produced, I think, somewhere in the neighborhood of 5,000,000 tons of coal.

Q Now, Mr. Love, has Mr. Fox, or Mr. Moses before him, ever discussed with you, or anybody else in

Consolidation Coal Company, to your knowledge, the idea of establishing different welfare funds for different segments of the bituminous coal industry?

A Not to my knowledge, if I get your question right. Different welfare funds for different sections?

Q Different funds for different segments

[4068] of the industry.

A Not to my knowledge; not to my knowledge

Q Have you and Mr. Fox or Mr. Moses before him ever discussed the results of the Welfare Fund costs on the rest of the industry besides Consolidation Coal Company and the major companies.

A We maintained during this period that the money paid into the Welfare Fund by a particular company should be primarily for the benefit of that company's employees. That was the position we took quite early in the discussions of the Welfare Fund, but outside of that we have not discussed it, as far as I know to my knowledge, applying a different set of principles for a different part of the country.

Q Mr. Love, I hand you an exhibit. I would like you to check it. Would you look at the front of that exhibit and see what the number is?

A This is Exhibit P357.

Q I refer you to Table 92.

A Table 92.

Q And I hand you a piece of paper. I would like you to do a little computing here, if you don't mind, sir.

A Okay, sir.

Q Now, we —

MR. COMBS: (Interposing) What is the table number, 92, Counsel?

[4069] MR. ROWNTREE: Yes.

Q We previously read into evidence, Mr. Love, certain figures from Consolidation Coal Company's

Moody's Industrial Manual's statement, which was exhibited in the prior deposition in Pittsburgh, and we read from that, that Consolidation Coal Company in 1959——

MR. COMBS: (Interposing) Would you tell me what year that report is?

MR. ROWNTREE: This is a 1960 Moody's Industrial Manual, for the last year computed in there or described in there being 1959.

Q And therein it is shown that Consolidation's tonnage sold was 37,521,000 tons.

Now, at 40 cents a ton, Mr. Love, would that not aggregate 15,800,400 tons?

A I haven't got my pencil but I am going to take these figures on face value.

MR. COMBS: That's dollars or tons?

MR. ROWNTREE: That's dollars, I am sorry.

Q We also have as Exhibit P143 the Moody's Industrial Manual statement for Peabody Coal Company, which shows in 1949 a tonnage of 26,907,378 tons, 1949, and at 40 cents a ton I believe that would aggregate $10,762,951. Is Peabody Coal Company one of the two largest coal companies in the industry?

[4070] A As far as production goes, yes.

Q Peabody and Consolidation Company, is that correct?

A I think that they produce more than any other two companies, yes. But bear in mind they are not very large.

Q Making a total payment to the Welfare Fund computed on these tonnages by these two companies of $25,771,351.

Now, Mr. Love, we have the 1959 Welfare Fund report of the Welfare Fund Trustees for the year 1959, which reflects total assets, total tonnage collections received

from operators under the provisions of the National Bituminous Coal Wage Agreement of $130,981,039, and if we subtract these computations of payment of Peabody and Consolidation from that it would leave a total of $105,209,6 paid by the rest of the industry.

MR. COMBS: Now, first, I object to this question, I don't see the materiality of it, but I wonder if counsel is reflecting the true situation here, the Welfare Fund reports are not in this record. My understanding is they are based on the fiscal year of June to June. I don't know what fiscal year he was using on the records of the company, but I don't see the materiality of this calculation. Lawyers can do that. This witness doesn't have to sit up there and help him calculate these things.

[4071] This is not in the record, what he is asking him.

MR. ROWNTREE: I want to ask him some questions when these facts are before him.

THE COURT: Well, I will allow him to ask it in the nature of a hypothetical question, assuming that these are the conditions. He may on that assumption state his question.

MR. COMBS: If he is assuming that it is an assumption because those welfare reports are not in the records.

MR. ROWNTREE: I am reading from them and they are admissible in the record as being exhibits to Mrs. Roche.

MR. COMBS: Of course, they may be admissible. I am just pointing out you have not put them in.

MR. ROWNTREE: Well, I am reading them into the record at this time.

MR. COMBS: I object to it. This witness is not competent to testify with reference to the exhibits of the Welfare Fund. We don't have any stipulation about him using those exhibits to this witness.

MR. ROWNTREE: Yes, you do.

MR. COMBS: Not to this witness.

MR. ROWNTREE: Not through this witness, but they are admissible in the case.

Q Now, Mr. Love, if the figure I have given you for payments to the Welfare Fund by the rest of the industry is correct, $105,209,688——

A (Interposing) How many cents?

Q I want to compare in this hypothetical question the net income of Consolidation and Peabody to their payments to the Welfare Fund and the net income of the rest of the industry compared to what they paid into the Welfare Fund, and we observed from the Consolidation Moody's statement that in 1959 Consolidation had a net income of $27,763,557, less interest of $990,716, leaving a net income before taxes of $26,772,841, Peabody, according to their Moody's statement having an income of $16,266,772 before taxes, making a combined net income of those two companies of $43,039,613.

Now, Mr. Love, will you observe on that——

A (Interposing) If you are reaching the point, Mr. Rowntree, I can save you time if you are reaching the point that the Consolidation could afford to pay the Welfare Fund and still have some earnings, I say yes.

Q All right, sir.

A And some of the rest of the industry, because of these losses, it was a more arduous burden for them, I admit that, we don't have to go into all these figures.

I also want to point out to you that Consolidation, fortunately for it, had other income besides from
[4073] coal, it had leases, it ran ships, it had docks, it had investments, so you can't compare them, you can't compare the income of Consolidation out of Moody's with that of some company that only has coal,

and I don't argue with you a minute that this Welfare Fund payment on some companies, large and small, was more difficult than for some other companies large and small. I don't argue either for a minute that Consolidation had ability to pay it. We didn't like it but we had the ability to do it.

Now, what more, what do these figures show outside of that?

Q Mr. Love, the figures show—well, let me get to it.

A I thought I was just saving you time.

Q And I think we do have to compare your ability to pay it from your net income with the rest of the industry

MR. COMBS: I object to that. That is argumentative and I say that—

THE COURT: (Interposing) Sustained.

Q Will you observe on that exhibit that you have there a column which shows the amount of net income of the companies, showing income for the year 1959?

A Um-hmm.

[4074] Q What is that figure?

A Companies showing income at 68 million approximately, I won't go into the dollars and cents.

Q Is not the actual figure 67?

A Sixty-seven, I will call it 68, can't we?

Q Well, I have got an exact figure of $67,970,000, is that right?

A And deficit companies showing loss with some $37,000,000 deficit, it shows there, a net income for the companies of $30,000,000.

Q All right, sir. Let's take this $67,970,000 for the industry of those companies showing income, subtract from that, from that the income of Peabody and Consolidation of $43,039,613. Does that not leave a net income

for the rest of the companies showing income of the industry of $24,930,387?

A I take your figures that that is correct.

Q Now, the deficit companies, and the deficit companies show a combined deficit in the industry of $37,398,000, is that not right?

A Yes.

Q So the net deficit of the rest of the industry outside of Peabody and Consolidation is $12,467,613, and this is after, is it not, they had paid to the Welfare Fund Trustees, $105,209,688, is that not true?

[4075] A I take it it is, I am not figuring these things.

Q What do you think about that?

MR. COMBS: Now, your Honor, this is strictly an argument that counsel can use in his briefs or whatnot, but this witness should not be asked questions of this character, completely argumentative, going into all these figures and calculations.

THE WITNESS: May I just——

THE COURT: (Interposing) Well, sustain the objection to the last question as being argumentative.

Q And you say, Mr. Love, that you have never discussed this problem in the industry with Mr. Fox and he has never discussed it with you?

A That's right. Now, let me state something to you about these particular earnings because I want to get it clear to this Court. What earnings Consolidation shows isn't really material. When this company was formed in '45 $200,000,000 of somebody's investment was wiped off of the books of Pittsburgh Coal Company. That was money that these companies were still showing, probably show losses if you took that $200,000,000 into account and paid interest on it and it hadn't been wiped out, then maybe

Consolidation would have had a deficit. The Pittsburgh Coal Company had over $230 in arrearages on its preferred, it was completely bankrupt, for all practical purposes. All those arrearages were wiped out
[4076] for the subtotal of some $400,000,000 in investment that was wiped out at the time of this merger. That's the reason this company could go on. Now, if you are paying interest on that money, if some of these other companies are showing deficits, maybe you would have an entirely different picture. All I am trying to say to you is I don't think is relevant, I don't think you can take the earnings of a given year and use that as any criterion of what the past has been for that particular company. If those debts were still on the books of these companies we would show a deficit, too.

Q Isn't it true that you made a net income?

A I don't argue that.

Q All right, sir. Since 1955, '53, at least, and you made one last year, didn't you?

A Certainly.

Q About 33 million net income?

A I am just telling you why.

Q But this problem is material to these other companies in the industry, isn't it, Mr. Love?

MR. COMBS: I object to the continuation of the line of questioning on this. The witness has pointed out the fallacy of trying to argue these figures on the basis of speculation on what these companies have as a deficit and all of that and I object to it, it is argumentati
[4077] Q Of course, there's some other companie making money in the industry besides Peabody and Consolidation, isn't that true?

A Yes, indeed.

Q Some of them would be Island Creek Coal Compan

and Pittston Company and some of these other larger coal companies?

A And I know of plenty of small ones that are doing it, too.

Q Yes. There are some small companies making money if they are ——

A (Interposing) It isn't a barometer of size, you just lose more if you are bigger, that's all.

Q And the kind of conditions that you operate in has got a lot to do with it, too, hasn't it?

A Yes.

Q But the industry as a whole, would you not say, is suffering from this situation?

MR. COMBS: Object.

* * *

[4078] Q And this 1959 situation would hold pretty true for the years '58, '59 and '60, '61, '62, accord-
[4079] ing to that exhibit that you have in front of you, is that not true? Would you read off the figures?

A I don't need to read them off. I will agree with you, the coal industry showed $8,000,000 of profit in '59 and $8,000,000 in '60, $31,000,000 in '61, $13,000,000 in '62.

Q That's after taxes?

A Yes.

Q That's after taxes. I show you a little pamphlet, Mr. Love, and ask if you recognize that?

A I don't recall whether I ever saw it but I know what it is. It is a pamphlet put out by the National Coal Policy Conference called "Pioneers in Cooperation."

Q Is that a statement attributed to you contained in that pamphlet?

A I don't know that. I might point out for the Court's

benefit that this National Coal Policy Conference has nothing whatsoever to do with wages, Welfare Fund, prices everything that is at issue here.

This was a cooperative effort of railroads that shipped the coal, of operators that mine it, of the United Mine Workers that work in the mines and of the equipment suppliers and also some utilities to have coal have a common voice in Washington politically, so to speak, so that we could see that coal had a chance, had an opportunity to have its fair share of the energy market in this country and as such it is a pretty unique organization, [4080] made up of all of these elements, elements like the railroads, who used to be we'd fight with them all of the time on rates, now we have reached the point that when it comes to arguing about imported oil and residual oil and competitive fuel we go down to Washington with a common voice and to some extent it has been effective and it has helped to hold coal's position in this country. It has kept it from declining as it has in most of the other countries of the world. We are very proud of this organization but it has nothing to do with the issues here, as I see them, which are wages, welfare funds, and prices.

* * *

[4081] Q Really what I am asking you is can you recognize whether or not you are responsible for these words?

A I was an officer of the National Coal Policy Conference and anything they put out I will take responsibility for it.

Q All right, sir. This states in here, "The current economic plight of many American coal producing areas is well known. It is receiving priority attention by the

Congress and the new administration, and press headlines in recent months have reported severe hardships — even actual starvation — stalking the blighted coal towns.

This seems an almost unbelievable situation in
[4082] a nation as great as ours, and in an industrial economy which demands the world's greatest supplies of energy. But it exists.

"The men of these blighted areas will continue to face starvation for a while as they wait hopefully for jobs in the mines. Eventually, however, those who can will move away in search of new employment in other fields. The loss of those men to the coal industry is a critical one. It takes years to train a modern coal miner just as it takes years to create and cevelop a modern coal mine. If older men are forced to leave the mining communities, certainly the younger men will not seek employment there."

Over on the next page there is a statement, "Why save America's coal industry?

"The next question which might be asked is: Granting that the coal industry is operating at an irreducible rate, why save the industry at all?

"The answer is obvious. Any country, every nation, protects its most abundant source of energy — particularly when energy from that source may be produced cheaper than from any other source in its most important industrial areas. If it does not, it is critically and inexcusably weakening its own economic strength and capacity for growth. Any country, every nation, must protect the only source of energy which could do the job of powering the nation if submarines, as they have done
[4083] before, stopped the flow of foreign oil into this country. Remember Germany had some 75 submarines in 1941 compared to the fleet of 500 modern deadly ones in Russia's possession today."

Those facts, are, I suppose, supposedly true?

A I think that is a good statement.

MR. COMBS: If the Court please, in order to have that first statement that he read in context, may I read a couple of paragraphs contained in the same one?

MR. ROWNTREE: Surely.

MR. COMBS: "Various measures to bring relief to these areas, such as increased aid to the needy, more surplus food distribution and the like will offer temporary benefits, of course, and are certainly necessary now. Also, encouragement of new industry and other measures now proposed will provide some jobs and alleviate some of the distress. But the solution of greatest potential importance to the basic problem of blighted Appalachian areas is a restoration of the coal industry to its rightful place in America's fuel complex, through sound national policies which today do not prevail.

"Why the current slump in coal, in contrast to records of steady growth in the rest of the nation's essential industries?

"Some of the reasons for coal's displacement are normal developments of a changing technology and merely [4084] show economic progress. As an example, we have the dieselization which gives the railroads more efficient operation. Another is the substitution of the more convenient natural gas for coal in heating homes. These changes are marks of progress and they are to be expected.

"On the other hand, because these advances have affected coal so drastically, we cannot pile on top of them further inexcusable losses, such as those caused by competitive fuels being temporarily dumped on an uneconomic basis, if we expect the coal industry to survive."

BY MR. ROWNTREE:

Q Now, would you agree, Mr. Love, that there is a considerable doubt whether the rest of the industry besides these major companies can survive under the National Bituminous Coal Wage Agreement?

A I think I have covered that in my deposition with you and this morning. A company has just—a small company has just as much chance of surviving as the larger ones you have mentioned. Don't forget, if you have a loss in a coal mine there's only one difference in what you call a larger coal company and a small one, is the number of mines. The mines are the sum. The fellow with one mine if it's a bad one is going to lose money and the bigger company with 20 mines, they are going to lose 20 times as much money, so I can't agree with your statement. The man that is efficient in any busi-
[4086] ness, in any business, and can do a little better job than his competitor is going to live and the fellow that can't isn't and that isn't only true of coal, it's true of automobiles and everything else.

This is no peculiar situation. Take the automobile business. How many companies were there at one time? Today there are four or five left. Now, does that mean that there hasn't been a contribution made to this country by the automobile industry? Certainly not. Well, it's made contributions.

Now, some companies have fallen out of the way and that's true in steel, it's true in everything else.

Q It's awful hard to compare steel and automobiles with the bituminous coal industry, though, isn't it?

A Not for me. I am in both of them. I see the fundamentals are the same, that you have to try to keep competitive.

Q How many——

A (Interposing) That's true of farmers as well

as coal mines.

Q How many automobile companies were there at the maximum?

A I will be darned if I know, but there were an awful lot.

Q Mr. Love, we have painted the picture [4086] of the rest of the industry subtracting the two major companies. It is true that Consolidation Coal Company has prospered.

MR. COMBS: Well.

Q And the assets of the company have increased in value.

A After wiping off some $400,000,000 to reorganization, don't forget that, bear that in mind, somebody took an enormous loss.

Q When did that occur?

A 1943 and 1945.

Q That was before 1950?

A That's right. So we started out in 1950 as a coal company with all our debts eliminated, really, the other fellow may not have had that fortunate situation.

* * *

[4088] THE COURT: In your negotiations how did you handle that or, more specifically, to what extent, if any, did differences in coal seam characteristics enter into your negotiations with the United Mine Workers?

THE WITNESS: Well, I think they entered in in this way, sir, that I thought the only thing I could do in representing these heterogeneous group of coal operators was just try to keep the wage advance as small as possible. Obviously the fellow with the higher wage cost, if you increased wages 5 per cent that 5 per cent would amount

to more cents per ton than the others, so, therefore, you couldn't differentiate between areas, all you tried to do was keep the increase down as low as you could.

And I think, "If you felt so strongly about this competition with oil and gas why did you finally grab any increase or recommend it to your fellow negotiators?"

The only answer was just one, that we could see with all this strike going on that we, the coal industry, was leading up to the same position that has been true in the '40s, the next step was a government take-over, the next step after that the government made a contract that might be worse than the one you could make, so, therefore, my whole dedication was to just having this wage increase as low as possible.

THE COURT: Was there any negotiations
[4089] with the United Mine Workers based upon differences in coal seam characteristics specifically?

THE WITNESS: No, sir; no, sir.

* * *

T. REED SCOLLON

[4689] a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q Would you please state your name, your professional position and location of your headquarters?

A My name is T. Reed Scollon; I am chief of the Division of Bituminous Coal, Bureau of Mines, United States Department of Interior, with headquarters in Washington, D. C. I also serve as coal export coordi-

nator for the Department of the Interior.

Q Mr. Scollon, are you here by virtue of a subpoena?

A Yes, sir.

[4690] THE COURT: How do you spell your last name?

THE WITNESS: (Spelling) S-c-o-l-l-o-n.

BY MR. COMBS:

Q As chief of the Division of Bituminous Coal and as coal export coordinator, what are your responsibilities in the scope of your activities, Mr. Scollon?

A I am responsible for the direction and supervision of the Bureau's bituminous coal resource program. This program includes economic and technical studies concerning coal, competing fuels and related activities.

As coal export coordinator I am responsible for the coordination of government activities in the coal export program and I also act as liasion between the government and industry in coal export problems.

Q In the capacity of chief of the Division of Bituminous Coal, do you have responsibility for the Bureau's coal economics and their statistical programs?

A Yes.

Q What other experience have you had in connection with your profession, Mr. Scollon?

A I have had approximately 10-years' experience as a mining engineer and director of research and statistics for a coal association. I have had approximately 15-years' experience in the Federal Government. In addition to my present positions, I served as chief of the Coal Price Section of the Office of Price Stabili-

[4691] zation in the Federal Government.

Q Would you please name some of the professional and technical groups with which you are affiliated?

A I am a member of the American Institute of

Mining, Metallurgical and Petroleum Engineers, of the Coal Mining Institute of America, of the Mining Standards Board of the American Standards Association, I am vice-chairman of the Coal and Coke Committee of the American Society for Testing and Materials, I am also vice-chairman of the United States National Committee of the World Power Conference, I have served on numerous occasions as chairman of the United States delegation to international coal meetings, including the Economic Commission for Europe and the Organization for Economic and Cooperative Development.

Q Are you here to testify as an expert or as an official government witness?

A As an official government witness.

Q As an official government witness, are you limited by the Bureau of Mines as to the type of testimony you can give?

A Yes.

Q In what respect?

A I am limited to the presentation and explanation and discussion of the statistics and economic studies concerning bituminous coal and competing fuels.

[4692] Q Were you asked by me to make available the Bureau of Mines' statistics on coal?

A Yes.

Q Are these statistics available to any taxpayer upon request?

A Yes.

Q Mr. Scollon, how much energy does the United States consume from energy fuels and water power?

A In 1964 the total energy consumption in the United States was 51.7 quadrillion BTU. This is equivalent roughly to 2 billion tons of coal.

Q What about water power, how much?

A Water power amounted to 1.9 quadrillion BTU. That is included in the 51.7.

Q All right. Would you define to the Court the term "BTU," what is a BTU.

A BTU is an abbreviation for British thermal unit. It is the unit that represents the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit. It is a commonly accepted unit for measurin for denoting heat and energy, and it is equivalent to the calorie in the metric system.

Q How many BTU's are there in a ton of coal?

A The BTU value of coal will vary very widely. The last published figures in the Bureau of Mines [4693] shows the average for the United States of 13,100 BTU per pound, or 26.2 million BTU per ton of coal.

Q I believe you say that the total consumption of energy in the United States would be equivalent to 2 billion tons of coal?

A Yes.

Q Now, what has been the growth in the United State of energy consumption, say from 1940 on through, what type of growth has it had?

A From 1940 through 1964 the average rate of growth of total energy was approximately 4 per cent, it increased from 23.9 quadrillion BTU's in 1940 to 51.7 quadrillion BTU's that I mentioned a moment ago in 1964.

Q And this 4 per cent that you were talking about is an annual growth, it grows 4 per cent?

A It's an annual growth rate, yes, sir.

Q What are the major sources of this energy now that is consumed?

A The major sources of energy are coal, which is bituminous and anthracite coal, petroleum and petroleum

products, natural gas and natural gas liquids, and water power.

Q Now, Mr. Scollon, have you prepared certain charts that show the relative importance of each of these energy sources in supplying the energy demanded?

A I have, yes.

[4694] MR. COMBS: Now, if the Court please, we have here nine charts that will be described by this witness and explained as he goes along.

Now, in connection with those charts we have a smaller edition we can furnish counsel and the Court. In addition to that, we have nine tables that will be described and plus three different tables, A, B, and C, and I think it would be more appropriate, if counsel has no objection, to introduce all of these as a collective exhibit and then the witness can testify and explain as we go along and I will give counsel copies and the Court copies and I think that would be the most practical way to do this.

THE COURT: We ought to be able to distinguish which chart the witness is referring to at any time. Would it be better to give them all numbers at this time?

MR. COMBS: The charts are numbered from 1 to 9.

THE COURT: 1 to 9?

MR. COMBS: Yes.

THE COURT: All right. Well, you can give them one number and then let them have sub-numbers.

(The charts referred to above were marked D394-1 through D394-9 and received in evidence.)

* * *

[4697] Q Now, Mr. Scollon, have you prepared a table that reflects what is on the chart there in percentages from 1940 that reflects in figures annually?

A I have done this for each of the charts.

MR. COMBS: Now, I have given counsel a copy. Would you pass this to the Court, please?

THE COURT: This has not been marked filed as an exhibit. Do you wish to do so?

MR. COMBS: Yes. I think that that will be
[4698] an exhibit. The chart that he is talking about, we have the large one, is reflected on the smaller size and then this would be an exhibit on the table sheet.

THE COURT: Very well. Let's give that a separate exhibit number for the purpose of clarity.

MR. COMBS: All right.

THE COURT: Exhibit No. 395 will be the tables.

(The tables referred to above were marked D395 and received in evidence.)

MR. COMBS: The table would be from 1 to 9 along with the charts. Now, we do have A, B, and C tables that won't be reflected on the charts, but I will come to that and I think that should be a separate exhibit.

MR. KRAMER: All of the tables have one collective exhibit number?

MR. COMBS: No, the tables are No. 1 to 9, just like the charts are.

MR. KRAMER: Are they?

THE COURT: We are giving one exhibit number to the charts, and the charts are then broken down into nine sub-charts and numbered 1 through 9.

MR. KRAMER: And the tables the same.

THE COURT: I have one exhibit number, D395, but the tables are broken down into nine sub-numbers.

MR. KRAMER. We want to know so we can
[4699] keep track.

MR. ROWNTREE: I think it should be made

clear there are actually more exhibits attached to D395 and in addition to the first nine tables these tables are A, B, and C and one extra one in the back.

* * *

HAMILTON K. BEEBE

[4749] a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

Q Would you state your name, your occupation, and your residence, please?

A My name is Hamilton K. Beebe; I reside at 1130 Chanticleer Lane, Hinsdale, Illinois, which is a suburb of Chicago; and I am a practicing attorney.

Q Mr. Beebe, are you connected with the Illinois Coal Operators' Association in any way?

A At the present time I am secretary of the Illinois Coal Operators' Association.

Q How long have you been with them as secretary?

A Since April 13, 1962.

Q Are you here as a result of a subpoena duces tecum to bring certain records relating to this association?

A That is correct.

Q Negotiations with the United Mine Workers?

[4750] A That is right.

Q Now, Mr. Beebe, besides being secretary to the Coal Operators' Association, have you served in other capacities with that association?

A Well, I was with a firm for many years, the firm of Essington, McKibbin, Beebe and Pratt, and Senator

Essington in our firm, were attorneys for Illinois Coal Operators' Association commencing in 1928 and we have—the firm was counsel until about 1957 or '58, at which time I became general counsel after Mr. Essington retired.

Q What is the size of this association, how many coal companies?

A At the present time?

Q Yes, at the present time and back through 1950. Let's start with 1950, if you have it.

A 1950?

Q The number of companies that belonged and approximately what tonnage they represented.

A I will have to look at the records here, about 26 members in 1950 and their tonnage at that time was approximately, of all of the members, was about 32 million tons.

Q Do you have any idea what the present tonnage is?

A Yes, I have an exact tonnage here, I think, of '63 and '64, the 1962 production was 37,740,420.

[4751] Q Are all of the members of your association located in the State of Illinois?

A That is correct. They all have producing mines in the State of Illinois.

Q Mr. Beebe, would you describe generally the functions of this trade association, the Illinois Coal Operators' Association?

A The principal function of the Illinois Coal Operators' Association is to negotiate the contract with the United Mine Workers and to service the contract.

Now, prior to 1958 we had other activities, we had a full-time traffic lawyer, and we also assisted the industry in such matters as water and air pollution, but since 1958, our activities have been almost solely confined to labor matters.

Q Now, was this association represented in the 1949

negotiations that led up to the execution of the 1950 Bituminous Coal Wage Agreement?

A The association was.

Q Now, how were they represented, in what group were they associated with?

A Well, Mr. Gerow, who is the president of the Illinois Coal Operators' Association, represented the association in the negotiations at that particular place in Washington.

Q Were they in the so-called northern group?

[4753] A That is correct.

Q And is that the association that Mr. George Love and the northern group, is that the one that he acted as spokesman for in these negotiations?

A That is correct.

Q Now, Mr. Beebe, how does the association arrive at whether or not they will execute these contracts, how are the members bound, how do you go about that? Will you tell me a little about the bylaws?

A Well, the bylaws provide that the membership, that is, the members, must ratify and approve any contract that is executed on their behalf.

Q In other words, there has to be a vote of the membership as such?

A That is correct.

Q Now, do your minutes reflect the negotiations on the part of your association in the 1949 negotiations that led to the execution and approval of the 1950 contract, do those minutes reflect that that you have there?

A Yes, they show an approval of that contract.

Q Well, now, would you turn to that?

A Yes. In the minutes of February 7th, 1950, the minutes evidence a report by Mr. Gerow of the negotiations that were taking place and on——

[4753] Q (Interposing) Just a minute. Now, you talk about the negotiations that were taking place, what was the nature of that report?

A Well, I will read it. It is a very short paragraph.

Q Would you please read it?

A "President Gerow reported on the status of the wage negotiations which had been carried over into this year to the date of this meeting and secured the opinion of the board members on several issues which were before the National Bituminous Coal Operators' Wage Negotiations Committee at that time. A full discussion took place but no action was considered necessary by this association."

Q Now, would you turn to the minutes, if you have them there, that would reflect the approval or disapproval of that contract after it was——

A (Interposing) The minutes of the special meeting held on March 8th, 1950.

Q Now, would you read those minutes? It won't take but a few minutes and I think that should be in the record. Would you read those minutes?

A "The roll call showed the following members present." You don't want all the members?

Q This is March the 8th, 1950?

A Yes.

Q It's an excerpt from the minutes of the Illinois Coal Operators' Association. It's not in there,

[4754] I don't think.

A Do you want the member companies?

Q Yes. Would you please just read that list?

A Bell and Zolar Coal Mining Company, Carmac Coal Company, C. W. and F Coal Company, Consolidation Coal Company, Franklin County Coal Corporation, Freeburn Coal Company, Little Sister Coal Corporation, Midland Electric Coal Corporation, Morris Coal and Mining

Company, Northern Illinois Coal Corporation, Northwestern Illinois Coal Corporation, Old Ben Coal Company, Peabody Coal Company, Pyramid Coal Corporation, Seminole Coal Corporation, Sycamore Coal Mining Corporation, Southwestern Illinois Coal Corporation, Truax-Traer Coal Company, Union Colliary Company, United Electric Coal Companies, Wallace Coal Company, and Wilmington Coal Mining Corporation.

"After reading the roll call, the secretary announced that a quorum was present, 23 companies were represented and the tonnage produced in 1949 by these companies was 28,130,635 tons, or 90 per cent of the total tonnage produced by the entire membership.

"Also present were Counsel Essington and Mr. Beebe. The National Bituminous Coal Wage Agreement of 1950, which was executed at Washington on March 5, by representatives of the bituminous coal industry, including President Gerow, who was our authorized representative at the wage conference, and who signed on behalf of this association subject to the agreement being ratified by our membership, was then read by the secretary and
[4755] several features of it explained by him and President Gerow, after which several questions were made by the members and answered.

"A motion was then made, seconded and unanimously carried that the 1950 agreement be ratified. A motion was made by Mr. Keller, seconded by Mr. Harrington, and carried by a standing vote that an expression of appreciation be extended to President Gerow for his efforts in and his time contributed to these negotiations from the time he was made our representative in September, 1949."

Q All right. Mr. Beebe, can you turn to the minutes and see what is reflected about the negotiations and approval of the 1951 Bituminous Coal Contract?

A I think this one, the one of January 17, 1951. The minutes read "Coal Wage Agreement of 1950. President Treadwell advised that this meeting was called by him at the request of Board Member Buchanan in connection with proposed amendments to the 1950 wage agreement. He then called upon Mr. Buchanan to address the Board on the subject.

"Mr. Buchanan advised the Board of his conferences with Mr. John L. Lewis, the president of the International Union, United Mine Workers of America, at Washington, several days before this meeting in connection with amendments to the existing agreement which had been discussed between Mr. Lewis and Mr. Harry M. Moses, president of the Bituminous Coal Operators' Association, [4756] at Washington.

"Mr. Buchanan went into considerable details with respect to his conversation with Mr. Lewis over the amendments which involved the increase in wages of the union members and expiration date of this amendment. He also advised that the lowest increase which Mr. Lewis would accept was $1.60 a day across the board to each union member and that the expiration date had not yet been decided, but he felt it would be March 31st, 1952.

"After discussion by the members present, Mr. Buchanan then made a recommendation that we accept these amendments as he had just received advice that morning that the large captive mine group, represented by the above-mentioned organization, had accepted them. Motion was then made, seconded, and carried unanimously that this association accept these amendments covering the increase in wages and the date of expiration on behalf of its members and Mr. Treadwell was instructed to immediately proceed to Washington and sign the amendments the next day."

Q Mr. Beebe, in 1952, what about the 1952 amendment to the Bituminous Coal Wage Agreement?

A What was the date of that contract?

Q I think September, 1952.

A I have no record here of an approval by——

Q (Interposing) All right. Let me ask

[4757] this: After the execution of the 1951 amendment, did the Illinois Coal Operators' Association become a member of the Bituminous Coal Operators' Association?

A They did.

Q And was the 1952 amendment to the contract executed by the Coal Operators' Association on behalf of the Illinois Coal Operators by virtue of their membership?

A Well, I can't answer that question, but our records that I have here do not show that the Illinois Coal Operators ever approved that contract, but the record does show that they were members at that time of BCOA, so I assume that is what occurred.

MR. COMBS: All right. I think counsel will stipulate and agree that is true because the contracts are here and show that.

MR. ROWNTREE: I will agree.

BY MR. COMBS:

Q Now, does the record show that the Illinois Coal Operators subsequent to the execution of the 1952 agreement left the BCOA?

A That is correct.

Q And when did they leave?

A Let's see. Well, they left, actually the release that was executed, which I have here, I brought along, is dated December 16th, 1952, which was approved by a special meeting of the executive board of the

[4758] Illinois Coal Operators, December 23, 1952.

Q All right. Do you have anything there that would indicate when the Illinois Coal Operators' Association became a member?

A Yes, I do.

Q What date was that?

A On March 11th, 1952.

THE COURT: Suppose that we recess at this time for lunch. Let's recess the trial of this case until 1:15. Resume the trial of this case at 1:15.

(Thereupon, at 12:05 o'clock, p.m., court was adjourned for the noon recess.)

AFTERNOON SESSION

1:05 O'Clock, P. M.
October 21, 1965

(Thereupon, pursuant to adjournment for the noon recess, court was in session.)

HAMILTON K. BEEBE

a witness called at the instance of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (continued)

BY MR. COMBS:

Q Mr. Beebe, just before the recess at lunch, I was asking you about the execution of the 1952
[4759] Bituminous Coal Wage Agreement. I think you stated that that agreement was signed for the Illinois Operators by the Bituminous Coal Operators' Association. You testified that the Illinois Operators had withdrawn from the Bituminous Coal Operators' Asso-

ciation in December of that year, which would have been December of 1952, I take it?

A That is correct.

Q Now, you were looking to determine when you became a member of BCOA. Would you continue on that?

A Yes. We became a member or we signed the application blank on April 9, 1952, as of April 1, 1952, the authorization was in the minutes of April 9, 1952.

Q Now, am I to understand then that from your testimony, based upon what these minutes reflect, that the Illinois Coal Operators belonged to the Bituminous Coal Operators' Association from April until December in 1952?

A From April 1, 1952, and the release was executed on December 16th, 1952.

Q Now, at any time subsequent to December of 1952 did the Illinois Coal Operators' Association affiliate themselves with the Bituminous Coal Operators' Association up to the present time?

A They did not.

Q Have they been members of the BCOA [4760] prior to April of 1952?

A No, sir.

Q Now, I have asked you some questions concerning the 1952 contract. Now, let's turn to the 1955 Bituminous Coal Wage Agreement, which became effective September the 1st, 1955. Would you look at the minutes and see what is reflected there concerning the negotiations and execution of the 1955 contract?

A The execution of that contract was approved at a meeting held on August 24, 1955.

Q Are those minutes very long?

A No, it's a short paragraph.

Q Would you read them, please, sir?

A It stated, "Wage Negotiations - New Contract. President Truax advised that the Bituminous Coal Operators Association has concluded a new agreement with the United Mine Workers of America covering an increase in wages and vacation pay to all members of the United Mine Workers of America covered in that association and certain other amendments to the National Bituminous Coal Wage Agreement of 1950 as amended. All of these amendments being effective from September 1, 1955, except one covering an additional increase in wages effective April 1, 1956.

"These amendments were read to the Board by the secretary and discussion followed. A motion [4761] was then made, seconded, and carried unanimously that this association accept these amendments and that President Truax be authorized to sign these amendments on behalf of and for the members of the Illinois Coal Operators' Association."

Then there is a note, "President Truax and Secretary Wilkey went to Washington on August 30th and President Truax signed on behalf of our members on that date."

Q Now, do you remember, do your minutes reflect the negotiations and execution of the amendment to the 1956 Bituminous Coal Wage Agreement? Would you turn to that, please?

A Yes, by the minutes of October 8, 1956.

Q Would you read those minutes, please?

A It's headed "Wage Negotiations - Amendments to Existing Wage Agreement. President Truax advised that the Bituminous Coal Operators' Association had concluded new amendments to the existing wage agreement of 1950 with the United Mine Workers of America covering an increase in wages and vacation pay to all members of the UMW of A that were covered in that association; that these amendments were effective from October 1, 1956,

except one covered an additional increase in wages effective April 1, '57. These amendments were read to the Board by the secretary, and discussion followed.

"A motion was then made, seconded, and
[4763] carried unanimously that this association accept these amendments and that President Truax be authorized to sign them on behalf of and for the members of the Illinois Coal Operators' Association."

And there is a note that President Truax went to Cincinnati on October 9th and signed on behalf of the members on that date.

Q To Cincinnati?

A Right.

Q Now, would you turn to see if there is anything that would reflect the negotiations and executions of the 1958 amendment to the Bituminous Coal Wage Agreement effective December the 1st, 1958? Would you turn to that one?

A There is some mention in the meeting of October 20th of '58, but it was approved on December 8th, 1958.

Q What mention is made?

A On October 20th, 1958, the minutes read, "Wage Agreement Negotiations - For Changes In. Talks have been going on between Mr. Lewis and Messrs. Fox and Moody, which is generally known. A discussion followed as to the probable demands to be made by Mr. Lewis and the effective date thereof, at the end of which Mr. Truax stated that he would follow the matters closely and keep the Board informed."

And the next meeting, October, pardon me,
[4763] December 8th, 1958, it is headed, the minutes are, "1958 Amendment to the National Bituminous Coal Wage Agreement of 1950. President Truax submitted to the members the above-mentioned amendment for dis-

cussion. The secretary read the amendments. After quite a full discussion that the protective wage clause incorporated in these amendments, a motion was made by Mr. Colnon and seconded by Mr. Mullins that we accept the amendments as submitted to us and that President Truax be authorized to sign on behalf of the members of the Illinois Coal Operators' Association. The motion carried unanimously."

And there is a notation here, if you want me to read it

Q Yes, if you would.

A "For the record, President Truax advised the members that these amendments had already been accepte and signed by the Bituminous Coal Operators' Association and the Southern Coal Producers' Association."

Q All right, sir. Now, that was the 1958 amendme Is there a reflection of the 1964 negotiations and execution of the 1964 amendments?

A Yes, sir.

Q Would you read that, please?

A "March 26, 1964." This is somewhat longer, if you want me to read it.

Q Well.

[4784] A "H. C. Livingston, President, acted as Chairman of the meeting. All members present by their duly authorized representatives ——

Q (Interposing) I think if you will skip to the purpose of the meeting, I don't think you need to repeat the representatives and all members.

A "The president stated that the purpose of the meeting was to consider and act upon the National Bituminous Coal Wage Agreement of 1950, as amended effective April 2, 1964, which was executed by the Bituminous Coal Operators' Association on March 23, 1964.

"The proposed agreement was thoroughly discussed

with emphasis on the section entitled 'United Mine Workers of America Welfare and Retirement Fund of 1950,' providing for the payment of 80 cents per ton under certain stated conditions and also the sections entitled 'Application of Contract to Coal Lands,' 'Helpers,' and 'New Machinery,' were reviewed at length by the members.

"Members Kelb and Kelce stated they would like to discuss with the United Mine Workers of America the proposed agreement with particular reference to the provisions respecting the Welfare and Retirement Fund before coming to any decision with respect to the approval of the agreement.

"The president then stated that it would be in order to recess the meeting to give Messrs. Kelb and Kelce
[4765] time to discuss the agreement with the United Mine Workers of America.

"Upon motion duly made and seconded and unanimously carried the meeting was recessed to reconvene on Wednesday, April 1st, 1964, at 9:00 a.m. in the office of the association at 307 North Michigan Avenue, Chicago, Illinois."

And then it is entitled "Reconvened Special Meeting of the Illinois Coal Operators' Association held Wednesday, April 1st, pursuant to resolution adopted at special meeting of members of Illinois Coal Operators' Association held on Thursday, March 26, 1964. The meeting was reconvened in the offices of the association at 9:00 a.m. on Wednesday, April 1. Mr. Livingston, president, acted as chairman of the meeting, and Hamilton K. Beebe acted as secretary. The following companies were present by their duly authorized representatives."

You want the name of the companies?

Q No, I don't think that is necessary.

A "The secretary——

MR. ROWNTREE: (Interposing) I would like to have them.

A "Bell and Zolar Coal Company by Mr. Landis; Fairview Colliaries Corporation by Mr. Kelb; Freeburn Coal Mining Corporation by Mr. Nugent; Midland Electric Coal Company, Peabody Coal Company, South-
[4766] western Illinois Coal Corporation by Mr. T. C. Mullins, Jr.; Stone Fort Coal Mining Company by Mr. Sherwood; Funderburk Colliaries Corporation, Norman E. Kelb; Truax-Traer Coal Company, H. C. Livingston; the United Electric Coal Companies, J. N. Morris.

"The secretary announced that all members of the association were present in person. The president reques[t] Mr. Kelb to make a report on the meeting held in Washington, D. C., on March 27, 1964, between Messrs. Kelb and Kelce and the United Mine Workers. Mr. Kelb reported that he and Mr. Murl Kelce had a meeting with the President of the United Mine Workers of America, at which meeting they requested the Mine Workers to make certain modifications in the proposed agreement, but the Mine Workers were unwilling to make any written modification in the agreement as submitted.

"Mr. Mullins stated that Midland Electric Coal Corporation, Peabody Coal Company, and Southwestern Illinois Coal Corporation would not vote to approve the proposed agreement until the provisions with respect to the Welfare and Retirement Fund were eliminated from the agreement or substantially modified. Other members stated that in their opinion a failure to approve the proposed agreement would undoubtedly cause work stoppages, which would be damaging to the Illinois coal industry, particularly in view of the competitive situation with respect to natural gas and atomic energy.

[4767] "After a thorough discussion, which all members participated, Mr. Nugent moved the adoption of the following resolution:

"'Resolved that the Illinois Coal Operators' Association does hereby approve the National Bituminous Coal Wage Agreement of 1950, as amended April 2, 1964, a true copy of which is attached to the minutes of this meeting as Exhibit A and be it further resolved that the proper officers of the association be and they hereby are authorized and directed to execute the same in the name of the association for and on behalf of its members.'

"The motion was seconded by Mr. Landis. The president thereupon instructed the secretary to call the roll of the members in favor and against the adoption of the resolution.

"Upon roll call, the following vote was recorded."

MR. COMBS: Do you want that, Counsel?

MR. ROWNTREE: Yes.

"In favor of the resolution, Bell and Zolar Coal Company for their Murdock Mine, their No. 3 mine, their No. 4 mine, and the Spartan mine; Fairview Colliaries Corporation for the Harmatton mine; Freeburn Coal Mining Company for the Crown mine and Orient No. 3 mine, Orient No. 4 mine, Orient No. 5 mine; Stone Fort Coal Company, Mining Company, the Allendale mine, and the Will Scarlett mine; Funderburk Colliaries for the Carmac

[4768] mine, the Delta mine, the Sunspot mine.

"Truax-Traer Coal Company for the Fiat mine, Burning Star No. 1 mine, Burning Star No. 2 mine, Little Sister mine.

"The United Electric Companies for the Cuba mine No. 9, Fidelity mine No. 11, Burkhart mine No. 17, Mary Moore mine 25, and the Banner mine No. 27, for a total of 23 votes.

"Against the resolution: Midland Electric Corporation for the Adkinson mine, the Middle Grove mine, the Victoria mine, and the Green Diamond mine.

"And Peabody Coal Company for the No. 2 mine, Edward mine, Mine No. 10, Energy mine, River King mine, Northern Illinois mine, Key mine, and Utility mine.

"And Southwestern Illinois Coal Corporation for the Streamline mine. Total votes against, 13.

"The president then declared that a majority of the members having voted in favor of the resolution the same is adopted.

"Mr. Mullins then tendered the resignation of Midland Electric Corporation, Peabody Coal Company, and Southwestern Illinois Coal Corporation from the Illinois Coal Operators' Association effective immediately.

"Thereupon, moved by Mr. Morris that the resignation of Midland Electric Coal Corporation, Peabody
[4769] Coal Company and Southwestern Illinois Coal Corporation as members of the Illinois Coal Operators' Association be accepted effective immediately.

"The motion was seconded by Mr. Sherwood and carried by the unanimous vote of all members except Mr. Mullins, who could not vote upon the motion. The meeting was then adjourned."

Q Now, Mr. Beebe, these withdrawals by Midland, Peabody Coal Company, do the minutes reflect whether or not those companies ever returned to the Illinois Coal Operators' Association.

A They have not returned and the minutes so reflect.

Q They are presently not members of that association?

A That is correct.

MR. COMBS: If the Court please, we make reference in connection with this witness' testimony to Exhibit D369, particularly the signatories to the contract from 1950

through 1964.

MR. ROWNTREE: Does Peabody show up on that '64?

MR. COMBS: There are no signatories shown.

MR. ROWNTREE: You don't have any signatories there?

MR. COMBS: No, some of them don't have printed signatories.

[4770] BY MR. COMBS:

Q Mr. Beebe, I think I am correct in what the minutes reflect, but I will ask you whether or not that at the time that the Illinois Coal Operators' Association between April and December of 1952, whether or not the Peabody, by virtue of its membership in the Illinois Coal Operators' Association was also a member of the BCOA?

A We became, I believe what we call an associate member of the Bituminous Coal Operators' Association.

Q Well, without reference——

A (Interposing) That meant that BCOA was authorized under the bylaws of BCOA and under the amendment of our bylaws to negotiate and sign a contract on behalf of our members and Peabody Coal Company was a member of the Illinois Coal Operators' Association during that period of time.

MR. COMBS: Your witness.

CROSS-EXAMINATION

BY MR. ROWNTREE:

Q Mr. Beebe, what caused the Illinois Coal Operators' Association to withdraw from BCOA on or about April 9, 1952?

THE COURT: December.

MR. ROWNTREE: I mean December.

MR. COMBS: They became members in April.

BY MR. ROWNTREE:

Q I am sorry.

A I think, of course, I attended those meet-
[4771] ings and there were many views expressed in the meetings by the various members, but I think the basic reason that they withdrew was that they were unhappy about the wage negotiations that had taken place, I believe in September of 1952.

Q Do you know what they were unhappy about?

A Well, they were very much afraid they were going to be shut down and as most of our business or a large part of the business of the Illinois Operators is utility business, we just couldn't afford to be shut down.

Q Why were they afraid of being shut down, had you already signed, had the BCOA signed the contract for your members at that time for the 1952 amendment?

A Oh, yes. I believe the contract, the '52 contract, was executed sometime before we withdrew, we agreed to withdraw in December.

Q What was the fear that existed at that time in December with respect to being shut down?

A Well, there wasn't any fear at that time. This started some months before the actual meeting. There was a lot of discussion about the wage negotiations, they were unhappy with them and a lot of our members felt as if they had lost their freedom of action and they figured from their own selfish standpoint, which is the only standpoint, of course, they were interested in as operators, that they were better off out of BCOA than they
[4772] were in.

Q You wanted some freedom of action with respect to the terms of the contract?

A That is correct.

Q Did you obtain any freedom of action in 1955 with respect to the terms of the contract?

A No, but we had the right to either accept or reject the contract which we would have not had if we were members of the BCOA.

Q But you accepted it?

A That is correct.

Q I notice those were very short minutes. Was there any lengthy discussion about it in 1955 that you recall?

A I can't recall a single meeting where the wage contracts came up that it didn't last quite a long time. The secretary usually read the contract in its entirety and they would discuss the various provisions back and forth.

Q And some would be pretty adamant against and some would be for it?

A I don't think I ever heard an operator being in favor of a new contract.

Q They all spoke against it?

A Well, they never liked an increase in wages and they violently objected, all of them, to the royalty payment to the Welfare Fund.

[4773] Q At 40 cents a ton?

A That's right.

Q Each time?

A That's right.

Q Now, I notice that there in 1955 and 1956 that the vote was taken and then the president would go to Washington or Cincinnati to sign.

A That's correct.

Q He did not go to negotiate, did he?

A Not at that time, no.

Q Then in 1958 you had this amendment with the protective wage clause in it?

A Right.

Q Did you become one of the industry members of

the Joint Industry Contract Committee of the bituminous coal industry?

A I did.

Q What was that committee?

A Who was on the committee?

Q What was it, what was the purpose of it?

A Well, it is set forth in the 1958 Bituminous Coal Wage Agreement. It was a committee of three representatives of the United Mine Workers and three operator representatives, and they were given the powers that are set forth in the 1958 agreement.

[4774] Q Well, generally was that to police the industry, to police the terms of the contract with respect to signatory companies buying or dealing in coal that was produced under terms not equal to the contract terms?

A Well, I would hesitate to characterize the 1958 protective wage clause—I think the provisions are fully set forth in the 1958 agreement.

Q Well, I think that is true, Mr. Beebe. We have got the contract in the record.

A Yes.

Q That would be the best evidence. Did you actually have a meeting?

A Oh, we had many meetings.

Q Who was on the committee?

A For the Mine Workers the original committee was Mr. Lewis, Mr. Kennedy and Mr. Owens and for the operators Mr. Fox, Mr. Moody and myself.

Q And the protective wage clause was designed to keep the signatory companies from dealing in or handling coal that was not produced under the terms of the national contract?

MR. COMBS: I object to the form of the question.

Counsel is asking what a written instrument was designed to accomplish. He is asking the witness, and I object to the form of the question. The contract is the best evidence.

[4475] MR. ROWNTREE: I think that the objection is well taken. I withdraw it.

BY MR. ROWNTREE:

Q What was the purpose of your meetings, the meetings of this committee, to carry out the objectives as presented in the national contract?

A That is correct.

Q Now, who represented the industry on this committee?

A Mr. Fox, who was president of the Bituminous Coal Operators' Association, Mr. Joseph Moody, who at that time was president of, I believe, the Southern Coal Producers' Association, and myself. I was representing the states really of Indiana, Illinois and west Kentucky.

Q Yes. Now, Mr. Beebe, apparently a problem arose on this 1964 contract, particularly from Peabody?

A That is correct.

Q That's correct. Do you know what Peabody's problem was? Did they discuss it in this meeting?

A Yes. It was the 80-cent clause. They didn't want to sign with the 80-cent clause in the contract.

Q Why was that, why was it peculiar to them?

A Because they own either one or two mines in Illinois that are operated by members of the Progressive Mine Union, Progressive Miners.

[4776] Q And is it not true that if they signed the 1964 agreement that they would be barred from handling coal from their own mines?

MR. COMBS: I object to that question. I think the contract speaks for itself. He is asking for an inter-

pretation of a written contract.

BY MR. ROWNTREE:

Q Was that the fear that they expressed at the meeting?

A They didn't express it in that way, Mr. Rowntree. They merely said that because of their other mines under the Progressive, that the miners were under the Progressive Union, that they didn't want to sign an agreement with the 80-cent clause in it. That was the only statement made by Mr. Mullins at our meeting.

Q Now, I think the strike was called on them, was it not? Are you familiar with that?

A I don't know whether there was a strike or not.

Q Are you familiar with whether or not they signed the contract later?

A No, I'm not, but they are operating, so I must assume that they signed some sort of a contract.

Q Do you know whether or not they made the union—the union gave Peabody Coal Company any special dispensation or any special arrangement?

[4777] A I haven't the slightest idea, I haven't been informed.

Q Mr. Beebe, was the contract you signed or the association signed in each case the National Bituminous Coal Wage Agreement as amended for the particular year?

A That is correct, that's the National Coal Wage Agreement of 1950 as amended, those are the ones I spoke of from year to year and from time to time.

Q Mr. Beebe, I show you a sheet of paper—I wonder if you have ever seen that before?

A I never have, no sir.

MR. ROWNTREE: All right, sir. That's all.

THE COURT: Just a moment.

MR. COMBS: Mr. Beebe, I would like to ask a couple

of more questions.

THE WITNESS: I am sorry.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Counsel asked you with reference to the protective wage clause in the 1958 contract and the joint industry contract committee. I believe you said that you were a member of that committee and that Mr. Fox and the Bituminous Coal Operators was a member and Mr. Moody. Now, who was Mr. Moody?

A He was at that time president of the [4778] Southern Coal Producers' Association.

Q Now, while you were a member of that committee did the personnel change?

A Yes, Mr. Moody resigned as president of the Southern Coal Producers' Association and became head of the National Policy Conference, and Mr. Davis became president of the Southern Coal Producers' Association. He was substituted for Mr. Moody and then Mr. Boyle was substituted for Mr. Lewis and after Mr. Kennedy's death, Mr. Raymond Lewis became a member of the committee.

Q All right. Now, did that committee ever attempt to enforce any finding or any provision of the contract?

A No, we never got to that point. You will recall in the contract that I believe there were 120 days for certification and by the time the 120 days went by we had sent the certifications out to all signatories. We ran into—I think that went into May and then the mechanics of setting it up, and we were just about ready to really get into business when the amendment came to the Labor Act in the fall, I believe, I believe that was passed in around September.

Q Do you have reference to the Landrum-Griffin Ac

A That is correct.

Q Did that raise questions as to the legality of the PWC and your committee?

[4779] A It certainly did.

Q And what did the committee do about that

A I think the Landrum-Griffin Act became effective on November 13th, and we had a meeting on or about the 4th of November and ended all operations until the legal situation was clarified.

Q Now, as far as you know, is that clarified yet, has that committee been in action?

A No. I think the matter has now been remanded by the Court of Appeals and is now back before the National Labor Relations Board.

Q Did you have counsel separate and apart for that committee that represented the committee as such?

A That's right. We hired Mr. Lane, a Washington, D. C., lawyer, and he represented the joint industry contract committee from its inception, from the day we organized.

Q He represented the committee as an entity rather than individuals?

A That is correct. He represented the committee. A lot of us had independent counsel in addition to that, but he was the committee attorney.

Q Was it on his advice that the committee took the action and adopted the resolution to suspend its activities?

A That is correct.

RECROSS-EXAMINATION

[4780] BY MR. ROWNTREE:

Q Mr. Beebe, this protective wage clause, I take it, came to the Illinois Coal Operators'

Association in the form of the agreement that had already been approved by the Bituminous Coal Operators' Association, is that correct?

A I don't believe I quite understand. Do you mean did we see it for the first time when it was in the contract?

Q Were the terms of the 1958 amendment discussed before you voted on it in your association?

A Indeed so. Mr. Moody, and I can't think of the name of one of Jack Lane's partners, came out from Washington before the contract was signed and discussed with us the proposal that had been made for a protective wage clause and I looked it over and I suppose it was at least 10 days or two weeks before the contract was executed.

Q By your association?

A That is correct.

Q And that contract that you were looking at was the National Bituminous Coal Wage Agreement as amended in 1958?

A We didn't look at the entire contract. The subject of the conversations at that time were the provisions of the proposed protective wage clause.

Q And the clause was in the form that you saw it and the same form as was contained in the signed [4781] contract?

A It was substantially so. I think there was some minor modifications made in it, but I don't think they were substantive.

Q This language was actually negotiated over in Washington with the BCOA and the UMW, to the best of your knowledge?

A Well, actually Mr. Moody for the Southern Coal Producers was the one who brought it to the Midwest and evidently he was engaged in negotiations at that time actively because he had a copy of the proposed protective wage

clause with him at that time.

MR. ROWNTREE: All right. That's all.

MR. COMBS: One more question, Mr. Beebe.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Was this joint industry contract committee, was it formally dissolved, has it been formally dissolved?

A I think the present agreement became effective on April 2, 1964, and we had a meeting on March 31, 196 in Washington, and because it had been eliminated from the new agreement, we at that time dissolved the committee and authorized our secretary to dispose of all of the assets, the furniture and so on of the committee.

Q Now, you say that the 1964 agreement did not contain the committee, you mean the protective [4782] clause, protective wage clause?

A That is correct, the committee on the protective wage clause was eliminated.

MR. COMBS: Thank you.

RECROSS-EXAMINATION

BY MR. ROWNTREE:

Q Do you know what language was used to eliminate the protective wage clause in the 1964 contract?

A It was eliminated, as I recall it, I have the agree ment here, but I just think they, by the way, they went back on the amendments, they just simply eliminated all reference to the protective wage clause.

Q I have in front of me Exhibit D369, Mr. Beebe, the 1958 agreement, which has a wage clause and hours clause. Do you have the same agreement in front of you?

A The '58 agreement?

Q Yes.

A Yes, I do.

Q It has the wages and hours clause, after that it has the protective wage clause, is that right?

A That is correct.

Q Then a vacation payment clause and termination of agreement clause.

Now, do you have the 1964 agreement?

A I do.

[4783] Q Do you find any revocation of the protective wage clause?

A Yes.

Q Whereabouts?

A There is an amendment to the Bituminous Coal Wage Agreement of 1950, so you have to go back to the 1950 agreement in order to determine what is in the 1950 agreement as amended in '64. As I say, it carries forward and preserves the terms and conditions of the National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952, the National Bituminous Coal Wage Agreement of 1950 and all previous agreements as therein provided, such as amendments and modifications and supplements being as follows, to wit, and then we go over to the back.

Q Well, I think you pointed out to me for the first time how this accomplishes the revocation.

A Beg your pardon?

Q How this does accomplish the revocation. In other words, the only amendment after 1950 that is retained is the 1952 agreement?

A That is correct, it just eliminates it from the agreement.

* * *

WELLY K. HOPKINS

[5276] a witness called at the instance of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COMBS:

THE WITNESS: Excuse me, Mr. Combs, I just have so many files I thought I'd better make them
[5277] available as we go along.

THE COURT: We may need to get another table to put the exhibits on.

THE WITNESS: I trust, off the record, your Honor won't have to but I thought I'd better bring as many as I could that might be pertinent.

Q Would you state your name to the Court and your occupation and your residence, please?

A My name is Welly (spelling) W-e-l-l-y K. Hopkins. I reside professionally in office affairs at 900 Fifteenth Street, Northwest, Washington, D. C.; my residence is in 207 South Fairfax Street, Alexandria, Virginia.

Q What is your occupation or your profession?

A I am a lawyer by occupation and am presently employed by the United Mine Workers of America as its senior counsel and have acted in that capacity since May, 1940, for the past 20 years I have acted and am acting now in that capacity.

Q Mr. Hopkins, where were you employed or what were you doing before you came with the United Mine Workers?

A Mr. Combs, I was born and reared in Southwest Texas and started my practice there. After completing preparatory school work in 1915 I spent six years on a

ranch in South Texas and returned to school in 1920 at the University of Texas—after some three or four months in the Army in 1918—I spent three years in
[5278] academic work and in the law school and took my law degree in June, 1923, and thereafter practiced law in the general practice in my home county town of Gonzales, Texas.

I came from there to Washington. During my practice there I spent eight years in the Legislature of the State of Texas, two years in the House, six years in the Senate, and resigned to come to Washington to accept the position as Special Assistant to the Attorney General of the United States in charge of the trial section of the criminal division of the Department of Justice.

I stayed there from the spring of 1940 until I accepted the employment just outlined with the United Mine Workers of America as its senior counsel.

Q Now, Mr. Hopkins, as the senior counsel of the United Mine Workers have you participated in wage negotiations and contract making since you have been with the United Mine Workers?

A I have, Mr. Combs.

Q Would you describe generally in what capacity you have participated?

A Well, Mr. Combs, beginning with the negotiations in 1941 up to date with variations, but constantly at each contract making time I have either participated actively in the negotiations or had knowledge of them as
[5279] they developed or wrote the contract itself, in some instances I did both.

Q Now, commencing in 1941, would you give a brief resume of the contracts that you participated in helping negotiate, drafting and so forth up through the 1940's, say 1940 up to 1950, will you give a brief outline of the

names of the contracts and the dates, et cetera?

A 1940 to 1950? I will be pleased to, Mr. Combs.

There were two contracts negotiated in 1941, being the first contract after I entered into the employ of the Mine Workers in 1940. I did not participate actively in the negotiations of those contracts, being more or less a newcomer to the field. I have knowledge of them, however, in the sense that I attended the conferences, many of them in Washington basically and New York City during the time that this contract was being negotiated, it met in a joint conference of the operators with the union, but disagreement arising as between the so-called northern group and the so-called southern group of operators, the southern group withdrew from the joint negotiations and two contracts eventuated that year, one known as the Appalachian Joint Wage Agreement, dated June 19, 1941, effective April 1, 1941, to March 31, 1943. The second agreement thus negotiated was known as the Southern Wage Agreement, dated July 5, 1941, effective April 1, 1941, to March 31, 1943.

Now, I might say in that connection, Mr. [5280] Combs, that in addition to those two contracts thus negotiated the captive mines, that is, the mines owned by various companies——

Q (Interposing) First, let me interrupt you, Mr. Hopkins.

A Yes, sir.

Q Do your notes show, or have you checked the contracts for 1941 that you have just described? Were they contained in the proceedings in the conventions and, if so, what convention?

A Mr. Combs, my research and re-reading of convention minutes, I did not find them, I think the text of the contracts were inadvertently omitted from the printed

copies of the convention proceedings, at least the copies I had did not contain the text.

Q Is the recitation of the negotiations leading up to the contracts?

A Yes.

Q What proceedings are they and what page do you have that?

A I think you would find them in pages 37 to 63 of the 1942 UMW Convention or pages approximating that, but the negotiations have been delineated in the convention minutes.

MR. COMBS: Now, I call attention to the Court for convenience here that the 1942 proceedings to [5281] which the witness refers is Plaintiffs' Exhibit 129 in this case.

Q Pardon me. Would you go ahead with the captive mines?

A The captive mines, that is, the mines that basically are owned by steel companies who consume their own production, they first refused to execute the 1941 agreement that we negotiated in the manner that I have just suggested because of their objection to the union shop clause that was contained in those agreements.

That dispute continued for a number of months and was finally resolved at the request of the then-President of the United States, President Franklin D. Roosevelt, who suggested that the matter be submitted to arbitration and it was submitted to arbitration. A Board composed of Mr. John E. Steelman, Mr. John L. Lewis and Mr. Benjamin F. Fairless was appointed by the President on November 22, 1941, and on December the 7th, 1941, a day I assume we will all recall, the award was made by that arbitration board directing the parties to accept and execute the contract as previously executed by the northern

and southern operators containing the union shop clause. The captive mines accepted the award and executed the agreement and that history of those negotiations or arbitration proceedings are contained on pages 63 to 87 of the proceedings of the 1942 convention and the text of the award is to be found on page 82 of the same con-
[5282] vention minutes.

MR. COMBS: I might point out to the Court that these proceedings are Plaintiffs' Exhibit No. 129 in this record.

A However, Mr. Combs, the copy of the agreement that is, a copy as executed by the captive mines, I think is in the minutes but I have in my file, if I can find it, I think, a Veri-Fax copy of the contract as executed by Crucible Steele, no—by H. C. Frick on December 15th, 1941, and I know that all other captive companies executed identically the same agreement. I don't know that I can lay my hand on it but I have it here, I believe, yes, sir.

Q Would you make that an exhibit to your testimony, please?

This is a captive mine agreement, your Honor, that has not been submitted here.

THE WITNESS: It is the same provisions as contained in the contracts I have described but this one is executed by H. D. Frick Coke Company by Harry M. Moses, President, and I know that the other captive mines executed similar agreements.

MR. COMBS: I offer that as an exhibit.

THE COURT: Exhibit No. 431.

(The Wage Agreement referred to above was marked D-431 and received in evidence.)

[5283] Q All right. Now, what was the next exhibit?

A Subsequent to that time, in January of 1943 there was executed what came to be known in the industry as the sixth-day work week. It was executed by the union with the northern Appalachian operators on February the 10th, 1943, and likewise with the Southern Coal Producers Association. This agreement was to go into effect, was to be in effect until March 31st, 1943, however, it was carried forward and has been carried forward in each and all of the succeeding Bituminous Coal Wage Agreements that have been negotiated from that date up to this good day. A copy of that sixth-day work week may be found on page 93 of the proceedings of the 1944 convention.

MR. COMBS: On that, your Honor, is Plaintiffs' Exhibit 130.

Q Now, Mr. Hopkins, what brought about that sixth-day work week at that time?

A I think it was the "little steel" formula that had been negotiated or promulgated by the authorities of the government and it was an agreement on the part of the union with the operators to work the sixth day, I have forgotten the terms of the monetary amounts that were involved.

Q Well, was that brought about by the demand of coal?

A It certainly was. There was an exceed-
[5284] ingly high demand for coal and it was brought about basically for that purpose in order to keep the wage scale of the union in line, but basically it was necessary to work the sixth day that was not otherwise provided, the remuneration for which were not adequately provided that caused the sixth-day work week to be negotiated.

Q Of course, that was during World War II?

A That was during World War II, yes.

Q All right. Now, what was the next contract

that you had anything to do with?

A Well, Mr. Combs, the 1941 contracts that I have described terminating on March 31st, 1943, when the negotiations ensued at the termination of that the parties were unable to agree upon a new contract and it resulted—the first contract that was executed thereafter was between the union and the Illinois Operators Association, which was referred to in the first Illinois agreement dated July 21st, 1943. It was presented and, of course, as it had to be by its terms, to the War Labor Board for its approval The War Labor Board rejected that agreement on June 18th, 1943. The history of that first Illinois agreement and its contents are shown on pages 186 and 187 of the 1944 convention.

Q And that would be Exhibit 130 in this record. All right. The next one?

A The next one was what is known as the [5285] second Illinois agreement, the first one having failed and negotiations being continued between the union and the Illinois group at their request, and a second agreement was worked out.

At that time there was a major point of dispute as to what was known as travel time, as to whether or not travel time was compensable work time under the Fair Labor Standards Act and an attempt was being made on the part of the union and the Illinois operators to agree upon a settlement of the amounts that the union alleged to be due and to take care of the pay in future contracts.

Because of the War Labor Board's unwillingness to accept the formula for settlement in the first Illinois agreement, it was disapproved, so the second was negotiated, dated September 23rd, 1943, and it was submitted by the parties to the War Labor Board and it was approved by that Board on October 26, 1943, and it appears on pages

204 to 210 to the proceedings of the 1944 convention.

Q Which is Plaintiffs' Exhibit 130. Now, just one question in passing. You talk about the approval and disapproval of the War Labor Board. Was that on the basis of wage controls that were in effect at that time?

A Yes, sir. The Board, the War Labor Board, had been set up and was passing upon, as a federal tribunal, the fairness or unfairness of all collective bar-
[5286] gaining agreements.

Q All right, sir. What was the next one?

A The next contract was what came to be known as the Ickes-Lewis Agreement of November the 3rd, 1943. Now, that came about because the mines, the bituminous coal mines, had been seized by the government under Presidential executive order and after the seizure directions were given by the President to the Secretary of the Interior, who was placed in charge of the mines, to negotiate a contract in order that the mines might continue to work and it was so negotiated and executed on November 3rd of 1943, and contains the language, "The terms and conditions of employment for the period of the operation of the mines by the government."

Now, the mines had been seized, as I said, under executive order, dated November 1st, 1943, and these proceedings, this contract and its execution, show on pages 220 and 221 of the proceedings of the 1944 convention.

Q Which is Exhibit 130. Now, Mr. Hopkins, let me ask you a few questions about this. You speak of Presidential or governmental seizure, the Ickes-Lewis Agreement. Just how did that seizure take place, was that by virtue of Presidential executive order?

A Yes, sir. The President executed a formal executive order proclaiming his duties being performed under, as he said, his Constitutional powers and what

was known as the Smith-Connally Act or the War Labor Disputes Act that the Congress had enacted and [5287] was in effect at that time. Based upon that legal authority the President issued his order, ordered the mines to be seized and placed the Secretary of Interior in charge of them.

Q Did he authorize the Secretary of Interior, who I think you said was Mr. Ickes, did he authorize the Secretary to negotiate a contract?

A He did, he directed him to do so.

Q Now, I notice that it is referred to as the Ickes-Lewis Agreement. What authority did Mr. Lewis have to enter into this contract, where did he get his authority?

A Mr. Lewis had his authority from the policy committee of the Mine Workers Union, the policy committee being those members of the union that are selected from time to time by the International Constitution, composed of representatives from each and all of the local unions in the jurisdiction of the International Union to become members of the policy committee, who promulgate and lay down to their officers and to such negotiating representatives as they may choose the terms of a new contract and to whom a contract such as are negotiated must be submitted for approval, and they had directed the International officers, headed up by Mr. Lewis, that that policy committee then in existence thus constituted, they directed him to execute a contract with the government.

Q Do you recall where that contract was [5288] signed?

A If I am not mistaken, it was signed in the White House in the presence of the President.

Q President Roosevelt?

A I think it was signed there. It was actually negotiated, because I was present during the negotiations

and the drafting of it, in the offices of the Secretary of the Interior in the Interior Building in Washington.

Q All right. What about the next contract?

A The next contract is generally called in the trade or in the union history, the Supplemental Wage Agreement. It is dated December the 17th, 1943, effective subject to the approval of the War Labor Board and due to expire on March 31st, 1945. It came about in this fashion: After the Ickes-Lewis Agreement had been negotiated and was in effect there was a constant urging on the part of the Secretary of the Interior to the union and to the operators, both singularly and jointly in various meetings, that they should negotiate a contract so as to bring about a cessation of government operations under the seizure.

So negotiations were conducted by the union with the so-called northern group, the captive group and the Illinois-Western groups and it was negotiated and agreed to on December the 17th, 1943.

Now, that carried forward, your Honor, all [5289] of the terms and conditions of the Ickes-Lewis Agreement of November the 3rd, plus such additional matters as the parties agreed to.

It was submitted to the War Labor Board for its approval. It was executed by this group first and the Board approved on May the 19th, 1944. Thereafter, the Southern Coal Producers Association, through its then-president, Mr. E. R. Burke, a former member of the United States Senate from Nebraska who had been employed as the spokesman and a collective bargaining representative by the Southern Coal Producers Association, executed the same agreement on June 16th, 1944, and this agreement is to be found on pages 246 to 261 of the 1944 convention proceedings.

Q Which is Exhibit 130 in this record. All right. Now, what about the next agreement?

A The next agreement was for the first time called the National Bituminous Coal Wage Agreement. It came about because the contract that I have just testified about reached its termination and the new contract was negotiated dated April the 11th, 1945, effective April 1, 1945, subject to approval by the War Labor Board and by the Office of Price Administration and subject to termination after March 1, 1946, by notices that either party could give as prescribed in the agreement itself.

The War Labor Board approved that contract
[5290] by order dated April the 23rd, 1945, and the OPA approved it on April the 28th, 1945, and this agreement was negotiated by and between the union, the northern group, the captive groups, the Illinois group and by the Southern Coal Producers Association, through its spokesman, Mr. E. R. Burke. Copies of it are to be found on pages 126 to 128 of the 1945 convention proceedings.

Q Now, the 1946 proceedings are Exhibit No. 131.

Now, let me ask you a question about that OPA. OPA's function was price control, was it not?

A Yes, sir.

Q It had nothing to do with wages?

A No, sir, price control completely, but the operators were asking for an increase in pricing of their product and they had to obtain, as they averred, approval from OPA of the contract thus negotiated that they averred would cause additional prices and for that reason the contract provided for submission to OPA.

Q Now, what about the next agreement?

A The agreement I have just testified about having run its course and the parties undertaking to negotiate a new agreement failed to do so when the contract ran out on the 1st of March, 1946. It led to work stoppages,

there being no contract to work.

It led to a government seizure again of the
[5291] mines by Presidential executive order on May 21st, 1946, in which the President directed that the Secretary of Interior, Mr. Julius Krug, take charge of the mines as its operating head and to negotiate a contract with the union.

Negotiations ensued as between the Secretary of the Interior and the union and an agreement was reached dated May 29th, 1946, effective May 29th, 1946, and to be continued during the period of government operation. That is to be found on pages 226 to 233 of the 1946 convention proceedings.

Q Which is Exhibit 131 in this record. Now, was this agreement negotiated through the same authority on the part of the government and the same authority on the part of the union as was the case in the so-called Ickes-Lewis Agreement?

A Yes, sir. Now, I have personal knowledge of it because I participated in its negotiation and drafting.

Q Now, where was this contract signed, do you recall?

A It was signed at the White House, although it was negotiated again actually and the drafting of it took place in the building of the Secretary of Interior in his office.

Q Was that President Truman at that time?

A It was President Truman.

Q All right. What was the next?

[5292] A That contract terminating or running its course led to the negotiation of the National Bituminous Coal Wage Agreement of 1947, dated July 8, 1947, effective July 1, 1947 to June 30, 1948.

Now, this contract was negotiated, Mr. Combs, by the union with the northern and Illinois groups and signed by

them on July 8, 1947. This for the reason that the Southern Coal Producers Association refused to join in these conferences leading up to the execution, they demanding and receiving from the union a separate negotiating conference. So conferences during the time were going on with the northern and Illinois groups were simultaneously going on with the Southern Coal Producers Association, but in a separate conference because of their own request and at their demand. However, the contract that was dated July 1, '47, was signed by the Southern Coal Producers on July 9th and 10th in '47 and they were agreed to and executed by the individual associations and the companies that included the Southern Coal Producers Association in their own individual names and in their own individual capacities rather than through the signature of the Southern Coal Producers Association as such.

Now, this contract is to be found on pages 69 to 77 of the proceedings of the 1948 convention and are fully describe in the affidavit of Mr. John L. Lewis appearing
[5293] on pages 124-125 of the proceedings of the '48 convention.

Q Now, that was Exhibit No. 131 in this record. All right. When was the next contract, please?

A That contract terminating and negotiations ensuing led to what is known as the National Bituminous Coal Wage Agreement of 1948, dated June 25, 1948, effective July 1, 1948 to June 30, 1949, and this contract was negotiated and executed by the northern, the captive and the Illinois groups and by the Southern Coal Producers Association, as such, that is, they executed it, they negotiated and executed in their name of Southern Coal Producers Association in contra-distinction to the way in which they had executed the preceding one, which was by individual companies.

Now, that arose because when the conferences, the negotiations started, the union took the position that it could and should negotiate with all of the individual companies and associations who were signatories to the '47 agreement.

Well, the Southern Coal Producers Association, as such, not being a signatory and notices for termination or the '47 contract calling for a conference between parties signatory to the contract, led the union to take the position with the association that they would
[5294] deal and negotiate with any and all of the companies in the association but not with the association as such.

Whereupon, the Southern Coal Producers Association filed unfair labor practice charges with the National Labor Relations Board. A complaint issued and on that complaint the general counsel of the Board moved in the District Court, the Federal District Court in Washington, for an injunction against the Mine Workers refusing to deal with the Southern Coal Producers Association as such, and an injunction issued at the behest of the Board and on June 4th, 1948, the union, bowing to the mandates of that injunction, agreed to negotiate with the Southern Coal Producers as such and that agreement was given by myself in my capacity as the general counsel for the union and the proceedings that I referred to, including the obtaining of the injunction, the statement that I filed in behalf of the union, are shown in an affidavit made by Mr. John L. Lewis, filed as part of the union's answer in that Labor Board case instituted by the Southern Coal Producers Association, appears on pages 120 to 125, and my statement appears on page 125 of the 1948 convention proceedings.

Q Which would be Exhibit 132 in this record.

A I might say in that connection, Mr. Combs, if you want a complete picture, that the captive mines, through Harry Moses, its representative, participated [5295] for the captive companies in all those negotiations leading up to an agreement on all points except it refused to execute the contract on June 25th, 1945, because of the inclusion of what they alleged to be an illegal union shop clause which, however, all of the other signatory operators and associations accepted.

They filed unfair labor practice charges with the Board on July 2nd, 1948.

Q When you say "they", that is, the captive group?

A Captive group. And the Board filed in the District Court in Washington a petition for an injunction and on July 13, 1948, it was granted and again the union, acting through myself as its counsel and under authority, entered into a written stipulation with the Court, executed by Mr. Moses and approved and accepted by the Board, filed with the Court, by the terms of which the captives agreed to accept the 1948 contract, including the union shop clause, pending final court decision of the legality of that clause.

Mr. Moses signed that contract for the captive mines on July 13, 1948.

Now, just to complete it, if you want it, proceedings were had under that agreement by hearings before a trial examiner of the National Labor Relations Board to the Board itself, to the Circuit Court of Appeals and [5296] in the Supreme Court of the United States to the extent of a petition for cert being filed there.

The Court refused the union's petition for certiorari on February the 26th, 1951, and thereafter the union complied with the requirements of the order.

Q Now——

A (Interposing) This is to be found, I might say,

on pages 146 and 147 of the '48 convention proceedings, including my statement of July the 2nd, the one of Moses on July 2nd, July the 13th, in the proceedings of that convention.

Q Which would be Plaintiffs' Exhibit 132 in this case. All right, sir. What was the next contract?

A Well, that contract terminated, I think, on July 30th, 1949, prior to its termination negotiations looking to the negotiation and execution of another contract ensued. It terminated in what was known as the—it didn't terminate however, but during the time of the attempted negotiations of a new contract or successor agreement between the union and the North, the captives and Illinois and the general groups, there was negotiated what was known as the National Bituminous Coal Wage Agreement of 1949 or sometimes called "The Intermediate Agreement", was executed at Washington, D. C., on December

[5297] the 6th, 1949, effective on December 1, 1949.

It was executed by "Operators negotiating committee by John M. Hodges, W. M. Birchfield and George Combs."

Now, this contract carried forward by reference all of the 1947 and previous agreements, including the "willing and able" clause that was a point of controversy in the other negotiations, the "memorial" clause, carried forward certain wage increases and increases in welfare payments.

Q What companies initially signed that contract? About what kind of tonnage did they have?

A There were approximately, I have forgotten the number of mines, but several, quite a number of them approximating about two and a half million tons annual production and covered approximately 45 to 50 thousand men working in mines located in Tennessee and parts of

Virginia and West Virginia.

That contract appeared on pages 111 and 112 in the 1952 convention proceedings.

Q Which is Exhibit 133 in this record.

A It is referred to also in the report of the National Emergency Board, that was thereafter created by President Truman in February of 1950. In that record made by that Board to the President on February 11th, [5298] referring to this contract that I have just describe it may be found on pages 138 to 146 of the 1952 convention proceedings.

Q Now, Mr. Hopkins, how many companies signed that contract, how much tonnage?

A I think something in the neighborhood of 40 million tons and about 18 or 19 hundred employees and on the date it was executed, if you want that, Mr. Combs.

Q Yes, I think that is important.

A On the date that it was executed, December the 6th, 1949, the union issued a statement that announced its execution, outlined its terms and specifically said this, among other things, "Coal companies signatory to the agreement are relieved forthwith of the current 3-day work week limitation."

That 3-day work week having come into existence on June 30th, 1949, prior to the execution of this contract.

And later, on January 11th, 1950, Mr. Lewis, as president of the union, sent a telegram to all of the bituminous coal district presidents to this effect, "It is possible that certain coal companies in your district who have become signatories to the new Bituminous Wage Agreement will desire to work six days a week and pay the time and a half required by the contract. This is officially to advise that the International Union gives each district president authority to grant such permission to work where companies

[5299] desire to do so and the men are willing."

And that is to be found on pages 146 to 148 of the '52 proceedings.

Q Which is 133.

Now, I take it that this statement here and this contract was during the time that a 3-day work week so-called was in effect in the industry?

A Yes, sir. The 3-day work week was in effect at the time this contract was signed on December the 6th. It had been first promulgated in the previous June 30th.

Q We will go into that a little later.

A All right.

Q I just wanted to ask you that as we go.

Now, what was the next agreement you have?

A The next agreement is known as the National Bituminous Coal Wage Agreement of 1950, dated March 5th, 1950, effective March 5th, 1950, to June 30th, 1952, and subject to termination thereafter, that is, after 1952, it being a firm contract for two years, on 30 days notice as prescribed in the documents, and it may be found on pages 128 to 137 of the proceedings of the 1952 convention.

Q Which is Exhibit 133 in this record.

Now, go ahead.

A Now, this contract was negotiated and executed on March 5th, 1950. It was executed, it was

[5300] negotiated and executed, your Honor, by all of the associations and all of the companies who had previously brought unfair labor practice charges against the union.

It occurred in this fashion, beginning in late December, 1949, charges were filed against the union by defendant groups of companies and associations averring that they were in violation of the Taft-Hartley Act in that we had refused or failed to negotiate properly, as they said, in

reference to what was known as the "able and willing" clause in the contract, in what was known as the "memorial" period in the old contract. The "able and willing" in the old contract and what they averred to be an illegal demand for a union shop.

At that time Section 9 of the Taft-Hartley in reference to union shops being allowable only after elections was still in the statute, as you gentlemen will recall it was thereafter repealed, but these charges were filed, five different groups of them, as I recall, they were complaints issued in each of them and all the complaints were then consolidated by the general counsel of the Board and based upon the consolidated charges the general counsel, in behalf of the Board, moved again in the District Court, Federal Court in Washington, for an injunction to enjoin the union as against their averment of an alleged unfair labor practice based upon the point that I have enumerated and after hearing—I think that was filed on or [5301] about the 28th of January of 1950, or some such date as that—after hearing before Judge Richard B. Keech an injunction did issue, which we refer to as the Penello Injunction, for lack of a better short term, and that was because Penello was the name of the regional director of the Board at Baltimore, in whose jurisdiction Washington fell, and so the proceedings were entitled Penello versus the union.

In the meantime, the President of the United States had again, under Taft-Hartley, invoked the national emergency power, appointed a National Emergency Board of Inquiry and it had called the parties before them and certain proceedings were had before the Board or under its auspices, but, in any event, they reported to the President on February the 11th, 1950, the status of the negotiations and the President then on that day in writing directed the Attorney

General of the United States to invoke the national emergency sections of the statute by, and the Attorney General, in complying, filed an application for an injunction with the same Court and the same Judge asking for an injunction and it was granted ex parte.

Now, those, among others who had joined in filing the unfair labor practice charges that led to the Penello injunction, covered the entire industry, your Honor, the North

the South, the West, and it specifically included

[5302] the complaints or charges upon which complaints were issued against the union, charges filed by the Southern Coal Producers Association through Mr. Stanlee Hampton, president, by J. Milton Cooper. That appears on page, now, wait a minute, the 1950 agreement, I beg your pardon.

Q I think we——

A (Interposing) The 1950 agreement showed that signature but, in any event, the 1950 agreement was then under the mandate of the Penello Agreement and the mandate of the emergency injunction.

THE COURT: Suppose at this time we take a brief recess.

(Thereupon, a recess was had.)

A Mr. Combs, I think I have made an inadvertent or made a misleading statement there in reference to the Southern Coal Producers Association. They did sign and file the complaint, the charges I speak of, upon which the Penello injunction issued and I was saying that they had signed the charges in the name of Stanlee Hampton. I meant to say, your Honor, that the record shows that the 1950 contract that was thereafter achieved, after the charges and the complaints and the two injunctions, was executed by the Southern Coal Producers Association, Stanlee Hampton as president, it appears.

[5303] MR. ROWNTREE: Was that "Southern Coal Producers"?

THE WITNESS: Southern Coal.

MR. COMBS: I think he has got a typographical error, Tennessee, Southern Tennessee Coal Producers Association.

MR. ROWNTREE: That's right, Southern Tennessee.

MR. COMBS: Southern Tennessee Producers, its marked here, Mr. Hopkins, as the "Southern Coal Producers", I think it should be "Southern Tennessee Producers". We can stipulate that.

THE WITNESS: I am sure that is right. My notes are in error as I read them here, I have it "Southern Coal Producers", and it should read, and I have before me the Xerox copy "Southern Tennessee Coal Producers Association, Stanlee Hampton, President, by J. Milton Cooper."

Now, Mr. Combs, that specific contract, the 1950 agreement, is in the record, as I understand, but this I have is a Xerox copy showing the signatures that I have just referred to, if you desire.

MR. COMBS: Yes, I would. I would like to introduce that as an exhibit.

THE COURT: Exhibit 432.

(The contract referred to above was marked D-432 and received in evidence.)

A Now, this shows, the first page of the contract, and then the signatures appearing on pages 28,

[5304] 29 and 30, but I do not reproduce the full body of the contract, it could be done, if you like.

Q That is in the record.

MR. ROWNTREE: Whose contract is this? Is this all of the operators?

MR. COMBS: Yes.

THE WITNESS: Yes. And then it shows it has been executed by Mr. Hampton as indicated.

Q Now, Mr. Hopkins, before we get into the so-called Penello injunction, I think you testified that there were two injunctions. The Attorney General petitioned for an injunction under the National Emergency Act and the Labor Board under Section 10-J and L?

A Yes.

Q And the Court issued the injunctions on the same day?

A Yes.

Q I believe we referred to them at that time as the "big injunction" and the "little injunction".

A I think that is right, sir.

Q That is correct. I will ask you this question, and we have them in the record here, whether or not that both of those injunctions, that is the injunction issued on petition of the Attorney General and the one issued on behalf of the National Labor Relations Board, did both of those injunctions order the parties to meet and
[5305] bargain collectively to negotiate a contract?

A It did specifically and in the case of the National Emergency injunction, it named every association and every coal company by name as a co-defendant, mandating them to negotiate a contract within the meaning of the Penello or the Labor Board injunction and among those co-defendants listed were the Southern Tennessee Coal Producers Association, Tennessee Products and Chemical, Tennessee Consolidated and the Whitwell Coal Corporation by name.

MR. COMBS: Now, your Honor, in connection with the witness' testimony here concerning this Penello injunction, I'd like to read into the record part of Judge Keech's

opinion granting the injunction and the injunction itself.

This can be found at 88 Fed. Sup. 935-943, starting out at page 938. I'd like to read this portion of that opinion, and I am quoting:

"The unfair labor practices on the part of the respondents here complained of are:

"1. Refusing to bargain collectively in good faith by insisting that any collective bargaining agreement with the employers provide, as a condition of employment, for a closed shop without compliance by the union with the statutory requirements, Section 8 (a) (3), prerequisite to every closed shop agreement."

[5306] Now, of course, I might interpret to say that they were talking about a union shop and not a closed shop. I think the Court's opinion is a little bit wrong.

I continue to quote the paragraph 2.

"By insisting that any collective bargaining agreement with the employers contain a so-called Welfare and Retirement Fund to be administered so as to provide benefits therefrom for benefits of the respondent union only;

"3. By insisting that any collective bargaining agreement with the employers contain such provision as the so-called 'able and willing' and 'memorial' clauses contained in prior agreements between the parties, which are designed and intended by respondents to permit them unilaterally to abrogate or suspend the operation of such contract at any time, and to permit respondents unilaterally to determine the period or periods when members of the respondent union shall work, or fix the terms and conditions of employment as respondents may see fit, so that the agreement would in reality not be binding upon the respondent union or its members; and

"4. By refusing and failing to accede to the request

of the Southern Coal Producers Association for further collective bargaining conferences."

Q Now, Mr. Hopkins, in the 1950 agreement what response was made to that injunction?

[5307] A In the injunctions that ensued under the directive and mandate of those injunctions, and pursuant to the Court order, the contract as executed eliminated the language to the extent and in the manner permitted by law as it had appeared in the prior agreement.

Q Now, so that it will be crystal clear, Mr. Hopkins, this contract is the 1950 National Bituminous Coal Wage Agreement?

A It was, sir.

Q Go ahead, sir.

A Then to meet one of the other mandates of the injunction——

MR. ROWNTREE: (Interposing) Did you say it eliminated that language or added it?

THE WITNESS: To the extent and in the manner permitted by law.

Q That was added?

A I beg your pardon, sir, yes. The contract had been made that the union shop was an illegal one, not in conformity with the statute, and in order to meet that mandate of the Court we added, your Honor, I am getting myself confused—Thank you, Mr. Rowntree—we added to that section of the contract the words "to the extent and in the manner permitted by law."

[5308] Then as to the charge, in reference to the payment of benefits from the Welfare Fund to members of the union only the contract was amended so as to allow a payment of benefits to others by adding the words "and to employees of the operators other than those exempted from this agreement."

Then to meet the mandate of the injunction in reference to the "willing and able" clause that had been in the previous contract that said in substance that the men would work during such time as such persons are "able and willing to work", that quoted language was stricken from the 1950 agreement and as to the "memorial" clause that had been in the preceding agreement and under the mandate of the same injunction, a new clause was written that limited the memorial period in the 1950 agreement to a period, to a maximum number of five days in any one year and as to the other charge of failing to respond to the Southern Coal Producers for request for bargaining conference, which I interpreted to say had been by letter back in 1949, after a series of conferences had terminated, but based upon that charge we met that by dealing directly and negotiating directly with the Southern Coal Producers Association jointly with the other operators.

Q Just in passing, Mr. Hopkins, in connection with this injunction and the contract, was the 3-day work week that you mentioned a while ago which was uni-
[5309] laterally invoked by the union, was that involved in or covered by the injunction in any way or by contract?

A None whatsoever because it had never been a contract clause.

Q All right. Would you go ahead with the national contract?

A The next agreement that ensued was known as the National Bituminous Coal Wage Agreement of 1950 as amended January 18, 1951, effective February 1, 1951, and was negotiated and executed by the Bituminous Coal Operators Association, it having come into existence sometime in 1950, I think it was, by the Southern Coal Producers Association, by the Southern Appalachian Coal

Producers Association, Southern Tennessee Coal Producers Association, and others subject to termination on 60 days notice on or after March 31, 1952.

Now, I have a Xerox copy of the 1951 agreement, at least I think I do, Mr. Combs, as executed by Southern Tennessee Coal Producers Association, 807 Commerce Union Building, Nashville, Tennessee, by Joseph E. Moody, and under the list of mines that are covered by this contract appears "Tennessee Consolidated Coal Company, Palmer, Tennessee, Local Union 5881; Tennessee Products and Chemical Corporation, Whitwell, Tennessee, Local Union 8182."

Now, the text of the 1951 contract is to be
[5310] found in pages 151 and 153 of the 1952 convention.

Q Which is Exhibit 133 in this record.

Now, would you make a copy of that contract that you just mentioned a part of your testimony?

A Yes, sir, I find it here.

THE COURT: Exhibit 433.

(The contract referred to above was marked D-433 and received in evidence.)

A The next contract, if that is what you are asking about, was known as the National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952, effective October 1, 1952.

Now, it was executed by BCOA, Bituminous Coal Operators Association, Southern Coal Producers Association, Southern Appalachian Coal Operators Association, Southern Tennessee Coal Producers Association, and others, and was subject to termination on 60 days notice on or after September the 30th, 1953.

Now, I have a copy, a Xerox copy, of that 1952 contract which shows the signature of Southern Tennessee Coal

Producers Association by Stanlee Hampton, President. The text of the 1951 contract or the 1952 contract I am speaking of, the text of it appears on pages 46 and 51 of the 1956 convention minutes.

Q That would be Exhibit 134.

[5311] Now, would you make this Xerox copy an exhibit?

A The Xerox copy I offer.

Q An exhibit to your testimony?

A Yes.

THE COURT: Exhibit 434.

(The contract referred to above was marked D-434 and received in evidence.)

Q All right, sir.

A Now, this new agreement was negotiated under these conditions ——

Q (Interposing) Now, this is the 1952 contract?

A 1952 National Bituminous Coal Wage Agreement.

Q All right, sir.

A Notices of the old 1951 contract, notices of termination were given by the union to BCOA on July 22nd, 1952, and the Southern Coal Producers Association on August 1st, 1952, and that appears on page 35 and 37 of the 1956 convention proceedings.

Q Which is Exhibit 134 in this record.

A Based upon those notices separate negotiations parallel one to the other ensued, that is also exemplified by a press release of Mr. John L. Lewis, dated September 15, 1952, appearing on pages 40 to 42 of the 1956 proceedings and of the convention.

Q Exhibit 134.

[5312] A And these negotiations culminated in the execution of the contract by BCOA, by the Southern

Coal Producers Association and others on the 29th of September, 1952, and specifically it was executed by Southern Tennessee Coal Producers Association—well, I have already gone over that, it was executed by the Tennessee Producers Association, a Xerox copy which I have offered.

Q Did there come a time, Mr. Hopkins, when these groups that signed that contract petitioned the Wage Stabilization Board for approval? At that time I take it the Korean War had brought on the Wage Stabilization program again, is that correct?

A That is correct, Mr. Combs. The Wage Stabilization Board was in effect and functioning at that time and pursuant to the contract, the terms of the contract, it was presented to the Wage Stabilization Board for its approval.

There were at least three, perhaps more, but three filings of applications specifically asking for approval of that contract, one in the name of the Bituminous Coal Operators Association, bearing Case No. N-20770, there were two filed by BCOA, and N-20771 on the docket of the Wage Stabilization Board.

The Southern Coal Producers Association also filed an application seeking approval and it bears Case No. N-20877,

and the Southern Tennessee Coal Producers

[5313] Association likewise filed an application affirmatively asking approval of the 1952 contract and it bears No. N-20887, and these proceedings are set out on page 53 of the 1956 convention proceedings.

Q Which is Exhibit 134 in the record here.

A Each of the petitions requested approval of the contract, which contained the various wage increases and other increases.

Now, subsequent to the filing of those applications for approval before the Board, they were filed, I think—no,

after the filing the Board held hearings, the Wage Stabilization Board, on October the 10th, I recall that because I was called back from Cincinnati from the national convention to appear before the Board, and on October the 18th the Board issued its findings and they approved the contract in part and disapproved it in part.

The part they disapproved was to cut down the wage increase that was provided for on the ground, as they averred at that time, that it exceeded some of the ceilings or limits under which they were operating that had to do with wage increases.

Now, after that, on the 26th of October, at the request of President Truman, a conference was held in the White House and the parties there appearing, that is, representat

[5314] of the petitioning operators to the Wage Stabilization Board, Mr. Lewis and others representing the union appeared before the President at his request and after discussions and under his suggestion they agreed to appeal the ruling of the Board that was approving in part and disapproving in part, they agreed to appeal that to the Economic Stabilization Administrator, a Mr. Roger L. Putnam.

Now, both operators and the union then filed statements with Putnam detailing the reasons why the contract should be approved in toto and those reasons as then presented to Putnam appear on pages 78 to 100 for the brief in behalf of the operators and on pages 106 to 109 of the briefs prepared and signed by myself on behalf of the union in the 1956 proceedings of the convention.

Now, thereafter hearings were held by Mr. Putnam and I think they extended, I know one day, November the 17th, perhaps another day, at which time the representatives of the operators appeared and orally argued for the approval of the contract.

After the hearings and while the decision was pending before Putnam, as I recall, President Truman again came into the picture in the sense that he, by a formal directive on December the 3rd, 1952, addressed to Mr. Putnam, overruled the Wage Stabilization Board and the acquiesences had been given to the Wage Stabilization Board by the Office of Defense Mobilization and in his directive he
[5315] specifically directed the approval of the 1952 contract as written and as the operators and the union had jointly presented it to the Wage Stabilization Board for its approval and it became effective on December 4th, 1952, and those proceedings or those things that I relate in reference to the Presidential directive appear on pages 112 and 114 of the 1956 convention proceedings.

Q Which is Exhibit 134 in this record.

A Now, that agreement also, in addition to an increase in salary, also carried forward——

Q (Interposing) Increase in wages?

A Increase in wages, carried forward an increase in Welfare payments, an increase from 30 to 40 cents a ton. Now, that was in the basic agreement that was presented by the operators under the several applications seeking its approval.

Q Including Southern Tennessee Producers?

A Yes, sir, and that same contract thus presented for approval by the operators after the execution contained what we call "application of contract to coal lands." That was an extenuation, actually, of the original leasing clause that had been inserted in the contract back in 1943. It contained the seniority clause and other benefits, so the contract thus negotiated contained a wage increase, an increase in the Welfare Fund and application of
[5316] contract to coal lands was finally put into effect on December the 4th after full examination and

hearings by the Wage Stabilization Board, by the economic stabilization agency and the President of the United States

U. S. MARSHAL MANSFIELD: The Grand Jury is ready to report.

THE COURT: All right. Let me see if Judge Taylor will let me receive it in the courtroom.

(Thereupon, a short recess was had.)

Q Mr. Hopkins, you have been testifying about the proceedings with reference to the 1952 Bituminous Coal Wage Agreement before the Wage Stabilization Board. During this time were there work stoppages in the industr

A Yes, sir.

Q Now, would you go to the next contract? I believ it is the National Bituminous Coal Wage Agreement of 1950 as amended in 1955?

A It was amended August the 20th, 1955, effective September 1, 1955. It was executed by BCOA, Southern Coal Producers Association, Southern Appalachian Coal Producers Association, Southern Tennessee Coal Producers Association, and others subject to termination on 60 days notice on or after August the 31st, 1956 or a firm contract of one year terminable thereafter.

I might say that that contract appears on pages
[5317] 124 to 127 of the 1956 convention proceedings, Mr. Combs.

Q Which is Exhibit 134.

A And I have a Xerox copy of the contract signed by "Southern Tennessee Coal Producers Association, Stanlee Hampton, President, by Brice O'Brian, Authorized Agent."

Q Would you make that an exhibit?

A Yes.

THE COURT: Exhibit 435.

(The agreement referred to abo was marked D-435 and received in evidence.)

Q All right, sir. What was the next contract?

A The next contract was the National Bituminous Coal Wage Agreement of 1950 as amended October the 1st, 1956, effective as of October 1st, was negotiated and executed by BCOA, Southern Coal Producers Association, Southern Appalachian Coal Producers Association, Southern Tennessee Coal Producers Association, and others, subject to termination on 60 days notice on or after September the 30th, 1957.

Now, it appears on page 304 to 306 of the 1956 convention proceedings.

Q Which is Exhibit 134 in this record.

A And I have in my hand a Xerox copy of that same agreement executed by the Southern Tennessee Coal Producers Association, 807 Commerce Union Building, Nashville 3, Tennessee, Stanlee Hampton, President, [5318] and under the listing of mines covered by this contract appears "Tennessee Consolidated Coal Company, Palmer Mine, Tracy City, Tennessee", and "Tennessee Products and Chemical Corporation, Reel's Cove Mine, Whitwell, Tennessee."

Q Would you make that a part of your testimony?

A I have offered it to the Clerk.

THE COURT: Exhibit 436.

(The agreement referred to above was marked D-436 and received in evidence.)

Q All right. What about the next wage agreement?

A The next agreement was the 1950 contract as amended December the 3rd, 1958, effective as of December 1, 1958, executed by BCOA, Southern Coal Producers Association, Southern Appalachian Coal Operators Association, Southern Tennessee Coal Producers Association, and others. It was subject to termination on a 60 day notice on or after November 30th, 1959.

Copies of that contract appear on pages 32 to 38 of the 1960 convention proceedings.

Q That is Exhibit 135 in this record.

A I also have in my hand a Xerox copy of this same agreement showing it to have been signed by the Southern Tennessee Coal Producers Association by Stanlee Hampton President.

Q Now, Mr. Hopkins, does this contract—

[5319] A (Interposing) Did you want this?

THE COURT: Exhibit 437.

(The agreement referred to above was marked D-437 and received in evidence.)

Q Did this agreement contain the so-called protective wage agreement?

A It did, Mr. Combs.

Q All right. What is the next contract?

A The 1950 agreement as amended March 23, 1964, executed by BCOA, Southern Coal Producers Association, and others, subject to termination on March 31, 1966. I am trying to see if I have a copy of that contract. I don't know that I do, Mr. Combs, at the moment, that is, the 1964 contract. I thought I had it here but——

Q (Interposing) All right. It is in this record in the 1964 proceedings, and that is Exhibit 136, the contract agreement is in this record.

A It couldn't be in the convention proceedings, I might say, because the 1964 convention proceedings have not yet been printed.

Q That is correct, but we do have the officers' reports and it is an exhibit.

A Yes.

Q All right, sir. Now, what about the protective wage clause in the 1964 contract, was that carried forward

[5320] or was it eliminated?

A It was eliminated from the 1964 contract in its entirety.

Q Now, Mr. Hopkins, did you request the research department of the contract department to check the records concerning the contract history of the following companies with the United Mine Workers, and I will list the companies: Consolidation Coal Company, the Island Creek Coal Company, the Pittsburgh and Midway Coal Mining Company, the Pittston Company, West Kentucky Coal Company and Nashville Coal Company, did you ask them to check their records to get their contracts?

A I did, sir.

Q I will show you this exhibit here and ask you if this is what you received from the records that you had checked.

MR. ROWNTREE: May I inquire who this information came from?

THE WITNESS: I requested that the contract department of the International Union prepare for me a history of the contractual relationships between the union and these named companies and this is the result of the showing of the contract relationship of these named companies with the International Union, as I recall it.

Q Would you make that a part of your tes-

[5321] timony as an exhibit?

A I will.

Q Let's read it. I will show it to you. Do you want to see it first?

MR. ROWNTREE: I would like to take a look at it. You offering this as an exhibit, Mr. Combs?

MR. COMBS: Yes.

THE COURT: Exhibit No. 438.

(The compilation referred to above was marked D-438 and received in evidence.)

MR. COMBS: If the Court please, I would like to read this, it won't take but a minute. These are the alleged co-conspirators and it contains a history of their bargaining, it has the contracts that were signed and the Mine Workers district in which they were signed and the association which signed the contract for them and the date on which it was signed.

I am starting in '64 and going back the way they have it here. First is the West Kentucky Coal Company.

1964, for District 23, the West Kentucky Coal Company is listed under "individual or association" as a division of the Island Creek Coal Company, Western Kentucky Coal Producers Association signed the contract and the date is 3-31-64.

[5322] 1948, District 23, Western Kentucky Coal Producers Association signed the contract on 12-16-58.

In 1956, District 23, Western Kentucky Coal Producers Association signed the contract for them on 10-1-56.

1955, District 23. The agreement was signed by West Kentucky Coal Company on 9-1-55.

Now, the Nashville Coal Company, Inc., 1964, District 23, currently a division of Island Creek Coal Company, Western Kentucky Coal Producers Association signed the contract for them on 3-31-64.

1958, District 23, Western Kentucky Coal Producers Association signed for Nashville Coal on 12-16-58.

1956, District 23 in Kentucky, Western Kentucky Coal Producers Association signed on 10-1-56.

The next one is the Pittston Company, Clinchfield Coal Company Division, 1954, in District 19 and District 28, now District 19 is in Kentucky and District 28 is in Virgin

and this contract was signed for the Clinchfield Coal Company by the Bituminous Coal Operators Association on 3-23-64.

Now, also in '64 in District 31, the Northern West Virginia Coal Association—Clinchfield Coal Company contract was signed on their behalf by the Northwest Virginia Coal Association as part of BCOA on 3-23-64.

1958, District 17, Clinchfield signed as an individual company on 1-1-61.

[5323] In District 19, which is in Kentucky, Southern Appalachian Coal Operators, SCPA and the BCOA on 12-1-58.

District 26, or 28, rather, the same year, which is in Virginia, Bituminous Coal Operators Association, on 12-1-58.

31, District 31, Northern West Virginia Bituminous Coal Operators Association and the Northern West Virginia Coal Association on 12-1-58.

Clinchfield Coal Corporation changed its name to Clinchfield Coal Company and merged with the Pittston Company on 12-28-56.

I don't think, your Honor, it will be necessary to take up the time to read these, I think you can get what the typical thing is and this runs through all of the co-conspirators and I don't think I will take up the time of the Court for that.

Q Now, Mr. Hopkins, before we get off of this contract matter, you have covered the contracts through 1964 up to date. I want to ask you a few questions on your own knowledge, based upon your participation in these negotiations and in the drawing of these contracts. Did you ever have any understanding or did you have any knowledge or agreement that the union had an agreement with any employer or group of employers concerning prices or

marketing of the product in the bituminous coal mining industry and was there ever any section of the
[5324] contract or demand for that on behalf of the union

A None whatsoever, either in the contract or to my knowledge.

Q Now, of your knowledge does any United Mine Workers officer or representative now, or has he ever had any agreement or understanding with any employer or group of employers concerning prices or marketing of the product in the bituminous coal mining industry?

A None whatsoever, Mr. Combs.

Q Do you now have or have you ever had any knowledge of an agreement or understanding with any employer or group of employers to set wages or other employment standards at a level designed to eliminate another coal operator from the industry?

A No, sir, not in any respect.

Q To your knowledge does any other UMWA officer or representative now have or has he ever had an agreement or understanding with any employer or group of employers to set wages or other employment standards at a level designed to eliminate another coal operator from the industry?

A No, sir.

Q Now, to your knowledge is the United Mine Workers position, that is, the union position on wages, hours and working conditions determined solely by the UMW
[5325] and based exclusively on what is regarded to be in the best self-interest of the employees represented by the UMW?

A Yes, sir, unquestionably so.

MR. COMBS: Now, we have a list of documents here your Honor, that we think are pertinent that I would like to introduce by this witness here.

Q Do you have those available there, Mr. Hopkins?

A I do, Mr. Combs, as they pertain, your Honor, to the two injunctions, which I have previously referred to in 1950, one being the Penello injunction and the other the emergency injunction or, as Mr. Combs called it the "little" and "big" injunction. I have before me a certificate from Harry M. Hull, the Clerk of the United States District Court for the District of Columbia, certifying as true copies in Case No. 275-50, styled John A. Penello, Regional Director, et al., petitioner, versus International UMWA and its agent, John L. Lewis, the following documents under certificate:

The petition for injunction under Section 10 (j) of the National Labor Relations Act as amended. It has attached to it as Exhibit 1 a copy of a consolidated complaint issued by the Labor Board in cases No. 5-CB-43 to and including Case No. 5-CB-47, being the consolidated complaint issued upon the charges of unfair labor practice having been filed by the various coal associations and companies that I have previously testified about, specifically naming
[5326] the Southern Coal Producers Association, BCOA and others as Exhibit 1.

The next exhibit document that I have here under certificate is the findings of fact and conclusions of law filed by Judge Keech on February 11, 1950.

The next document is the order dated February 11, 1950, filed on the same date putting the injunction in force.

The next document that I have thus certified is an order signed by Judge Keech on October 10th, 1950, in which the injunction issued on February 11, 1950, is vacated.

I can read them into the record, if you'd like.

Q No. Would you make this a collective exhibit to your testimony?

Yes, sir, I offer it to the Clerk now under this certificate.

THE COURT: Exhibit No. 439.

(The certified documents referred to above were marked D-439 and received in evidence.)

Q All right, sir. Do you have another exhibit there?

A I have also under certificate of Harry M. Hull, Clerk of the United States District Court for the District of Columbia, dated the 7th of September, 1965, the same date as the previous certificate, in Case No. 683
[5327] styled United States of America versus Internatio Union and others, covering under that certificate the following documents:

Complaint for injunction as filed by the Attorney Gener on February the 11th, 1950, and attached to that complaint as Exhibit A, a copy of the 1948 contract. I don't know whether it is attached to this certificate but I think it is.

Exhibit B is the letter of President Truman to the Attorney General directing him to petition for an injunction under the emergency section of the Taft-Hartley Act.

Exhibit C is the executive order No. 10106, issued by President Truman, appointing the Emergency Board of Inquiry to which I previously averted, and the other exhibit attached to the complaint is Exhibit D, the report of the Emergency Board directed to the President on February the 11th, 1950.

The next document contained under the certificate of the Clerk is a temporary restraining order that was filed on February the 11th, 1950. That contains, as I have previously testified, the named companies and associations who were named as co-defendants with the union mandating them to negotiate under the terms of the injunction as issued including the names of those companies of the
[5328] Southern Tennessee Coal Producers Association. Tennessee Consolidated, Tennessee Products

and Whitwell Coal Corporation.

Next is a copy of the preliminary injunction as it was filed on March 3rd, 1950.

The next is a document, is a motion by the Attorney General of the United States issuing or moving the Court for the discharge of that preliminary injunction previously issued on March 3rd, the date of the motion petitioning for the discharge showing a file mark of August 29th, 1951, in which they petition the Court to discharge the injunctions previously issued under appropriate recitation of the events that had occurred in the interval.

The next copy of the document attached under the Clerk's certificate is the order of the Court granting the motion to discharge the injunction, signed by Judge Edward R. Curran, filed on the 12th day of September, 1951, discharging the preliminary injunction and dismissing the action.

Q Are all those documents attached?

A Yes, they are under the Clerk's certificate.

Q All right. Will you make that a collective exhibit to your testimony?

THE COURT: Exhibit 440.

[5329] (The certified documents referred to above were marked D-440 and received in evidence.)

Q Does that conclude the exhibits that we had?

A Yes, sir, I believe that concludes the exhibits, Mr. Combs, as it pertains to those two injunctions.

Q All right. Now, I call your attention to pages 115 and 116 to the proceedings of the 1952 convention.

A That shows the report to the President by the National Emergency Board headed up by David L. Cole, Chairman, to which I have referred, and it is incorporated in the minutes of the 1952 convention.

MR. COMBS: I would like to read the wording of the two injunctions, just the wording of it as contained in the exhibit that he offered. In paragraph four it reads as follows, and I quote, "The defendants engage in free collective bargaining in good faith for the purpose of resolving their disputes and that they make effort to adjust and settle their differences as contemplated by the National Emergency provisions of the Labor Management Relations Act, 1947."

A Mr. Combs, my notes, if I may in that connection, showed that Judge Keech filed a memorandum opinion on March the 3rd, 1950, that is found in 89 Fed. Supp 187 to 195, among other things he said, "In the preliminary injunction the language shall be construed [5330] as requiring that collective bargaining conferences in good faith be held," without specifying whether or not all operator groups shall meet together.

Q The paragraph that I read follows that.

A Yes, sir.

Q All right, sir. Now, we have the various exhibits showing compliance with these orders and all but I don't think I will put them in, I don't think that it would be too helpful, I don't think that there is any argument on counsel's part that we did not comply with those injunctions and we did receive compliance orders. Can I have a stipulation?

MR. ROWNTREE: I really don't know.

MR. COMBS: Well, I have them all here.

MR. ROWNTREE: What part of the injunction?

MR. COMBS: We have the official documents here that shows compliance with these two injunctions and dismissal of the actions on the basis of the compliance.

MR. ROWNTREE: It is agreeable with me if you have documents, why don't you just put them in?

MR. COMBS: Put them in without reading them?

MR. ROWNTREE: Yes.

Q Do you have those compliance proceedings, Mr. Hopkins?

A Yes, I think I have, Mr. Combs.

[5331] Q Because they are a little lengthy.

A Might require just one bit of explanation. The compliance was had with the Penello injunction in Cases 5-CB-43 - 5-CB-47 simultaneously with compliance that was made by the union with the outcome of the 1948 proceedings that I have previously referred to brought by the captive mines as against what they averred to be the illegal union shop clause in the 1948 contract, that had gone to hearings, your Honor, before the trial examiner and it had gone to the Board, it had gone through the Circuit Court of Appeals, and was pending before the Supreme Court of the United States on petition for certiorari and it was denied about the time it came to comply with the Penello injunction, so a compliance was had by the documents that I will now introduce, Mr. Combs, of both of the injunctions.

Q I might describe these very briefly. These are the compliance proceedings of the United Mine Workers of America in NLRB Cases No. 5-CB-43 to 5-CB-47, these were the five cases in regard to the Penello injunction.

A That's right.

MR. COMBS: And we have an intermediate opinion by a trial examiner by the name of Leff that was accepted, the Supreme Court No. 497 growing out of the captive mine dispute, 1948, which Counsel Hopkins referred to.

We have a letter from Mr. Hopkins to Mr.

[5332] Penello in connection with the compliance and various correspondence in connection with that compliance.

We refer specifically to a letter which is contained in

this exhibit from the NLRB executive secretary to Welly K. Hopkins dated August the 10th, 1951, in Cases No. 5-CB-43 through 47, being the five charges on which the Penello injunction of February the 11th, 1950 issued and which were determined by Leff's intermediate report of December the 11th, 1950, and I quote, "Respondent is in compliance with the intermediate report in the above-entitled matter and the case is hereby closed."

THE WITNESS: Dated August the 10th, 1951, that particular one?

MR. COMBS: That is correct.

Q Now, would you make that file a part of your exhibit to your testimony as a collective exhibit?

A Yes, sir. I have several documents in order to explain that but I will offer them all at the same time. This is a letter from myself addressed to Penello dated May 22, 1951, reciting instructions of compliance to the various districts.

Then there is a letter identical in terms that has attache to that a letter written by me attached to the letter of Penello to James Mark, the president of a district that contains both the captive mines, your Honor, [5333] and mines in the bituminous industry that were involved in the Penello injunction showing to the director that we were making a joint compliance.

Then I have a similar letter addressed to Frank Hughes, a district president under the same date directing him likewise to post notices in compliance because of the fact that in his district there were also both character of mines

Now, as a part of the same exhibit I have a letter from the executive secretary of the Board dated August 9, 1951, reading, "The Regional Director of the National Labor Relations Board having advised the Board that respondent is in compliance with the court decree in the above-

entitled matter, the case is hereby closed."

That is Case 5-CB-14, again it being a captive mine case to which I previously averted.

Then, as Mr. Combs has previously said, I have the letter from the Executive Secretary of the Board, Mr. Kleiler, addressed to me on date of August the 10th of '51 covering Cases 5-CB-43 through 47, being the Penello injunction charges, reading, "The Regional Director of the National Labor Relations Board having advised the Board that respondent is in compliance with the intermediate report in the above-entitled matter, the case is hereby closed."

I observing, as Mr. Combs has previously,
[5334] that subsequent to the issuance of the injunction of the Penello charges we went to hearings before a trial examiner, Mr. Leff, in August of 1950 on these alleged unfair labor practice charges that had been filed cumulatively by all of the enumerated companies and associations and in the intermediate report that was filed by Examiner Leff in December of 1950, in which he exonerated, so to speak, or dismissed all of the charges except for the one that alleged unfair labor practice for demanding an illegal union shop, and that's the reason why the Board's letter of August the 10th refers to an intermediate report.

Now, a copy of that Leff intermediate report is available also, Mr. Combs, if it is desired to be filed.

Q I think we will just include it in the exhibit, in the collective exhibit.

A Very well. I have before me the original report that was served on me by the Labor Board at the time and I have caused it to be reproduced and I add it to the other documents that could be collectively, I assume, introduced as an exhibit. That would be one, two, three, four, five,

five documents with attachments to several of them.

THE COURT: Collective Exhibit No. 441.

(The documents referred to above were marked D-441 and received in evidence.)

Q Mr. Hopkins, I show you Exhibit No. 369.

[5335] Defendant's No. 369, and I call your attention to the clause in that contract, the 1950 contract as amended in 1952, on page 3, to the clause designated as the "application of contract to coal lands."

A Yes, sir.

Q I wonder if you would give a history of that clause from your experience in negotiating those contracts.

A I think I can.

Q First, is that generally referred to as the "land lease" clause?

A Yes, sir, that is the name that is referred to as that clause, as the leasing clause or the anti-leasing clause and so on, but the one you show me in the '52 contract stemmed from the original 1941 agreement.

Q All right, sir. Would you give us a history of that contract in its present status, I mean that provision in the contract in its present status?

A Yes, sir. I believe I can, if the Court and counsel will bear with me so I can turn to these several documents.

In 1941 there was contained in both the Appalachian Agreement and in the Southern Wage Agreement that I have previously testified about what was denominated "protective wage clause", and that was incorporated in that contract at that time because there existed between the

[5336] north and the south group of operators a wage differential of 40 cents, and in the negotiations that culminated in the '41 contract what they called the

"protective wage" clause was inserted.

That just said in substance if the mine workers make a wage agreement during said period covering wages or working conditions with any person or association or district within the Appalachian area on a basis more favorable than above, then this agreement shall be modified so that all parties to the Appalachian Agreement shall receive all of the benefits of such more favorable wage agreement.

And then it provides that the union reserve the right to call strikes or maintain strikes thereunder.

Now, that was inserted for the reason that I have stated and it is more cogently demonstrated perhaps and pointed out in what is known as the National Defense Mediation Board report covering the time of March 19, 1941 - January the 12th, 1942, being a document issued by the United States Department of Labor and being Bulletin No. 714 in which ——

Q (Interposing) Now, that is an exhibit in the record here but I don't recall exactly the exhibit number, we can check.

A I understood it was an exhibit already but I refer to it because it contains a complete chronological
[5337] account of the dispute, your Honor, in 1941 when the parties were attempting to negotiate a contract and part of the report states, specifically on page 110, I believe it is, according to my copy, this is the Mediation Board speaking, "As a result of this interruption of the unity of the operators," that is the north agreed to the contract that would carry this "favored nations" clause in it, the south dissented, withdrew from the joint conference and created for the first time what became the Southern Coal Producers Association and they dissented from this clause and that is what it meant when the Board

speaking says, "As a result of this interruption of the unity of the operators there was included in the new Appalachian Agreement the so-called 'protective wage' or 'favored nation' clause in which the United Mine Work bound themselves to wipe out the daily wage differential- that is, they agreed that if any more favorable terms as to the daily wage rate were granted to the operators in the southerly section, the operators in the northern sect would have the benefit." And it's inclusion in the new Appalachian, it meant that the 40 cents differential was to be wiped out.

"Any reduction of the 40 cents demanded from the ope ators in the southerly section would result in a correspo ing reduction of the wage increase signed to by the oper- ators in the northerly section."

[5338] Now, some interval of time intervened before the southern contract containing that clause was executed but it was eventually executed by the southern group precisely as it was contained in the 1941 Appalachi Agreement except that the Southern Agreement carried also an additional clause reading as follows: "It is unde stood that the protective wage clause of this agreement has no relation to and will not be utilized to inaugurate or institute the general practice of allocation of production within the Appalachian area." That was in the Southern Agreement, otherwise the "favored nations" clause was identical with that in the so-called Appalachian Agreemen That was the inception of the so-called leasing clause.

Q Now, Mr. Hopkins, I am told that that exhibit that you read from is Exhibit 375, the mediation report. Now, let's follow that "favored nations" clause just for one minute.

A All right, sir.

Q Now, may I ask was that carried over in the

succeeding contracts and, if so, how far did that go?

A That was carried forward by reference in each of the succeeding contracts from '41, where it first appeared, '43, Ickes-Lewis Agreement, contract of 1945, and then was specifically by name repealed in Section 2 of the Miscellaneous Section of the 1947 Coal Wage Agreement.

[5339] Q Which is part of Exhibit D-369.

Now, was that clause ever renewed or any negotiations about that, the "favored nations" clause?

A No, sir, it terminated and ceased, it went out of existence.

Q Now, do you know of your own knowledge why that clause was eliminated at that time, the purpose of it?

A Yes, sir, Mr. Combs, I recall because the contract was negotiated and signed, as I remember, your Honor, in July of 1947, and at a time that Taft-Hartley had been enacted by the Congress and referred to the President but before it had become law, it had been, as you may recall, it was vetoed, then the Congress overruled the veto, but before the effective date this contract was executed and I and others as legal advisors to the union felt that it was opening a field of possible actions against the union that had never before existed in the legal sense in the particular part of the Act that made the International Union suable as such and as responsible as such for alleged damage actions or alleged contract violations and specifically gave for the first time Federal Courts jurisdiction of such actions.

I thought that it was only a matter of being properly protective to the union, therefore, that any semblance of

[5340] previous contracts that might restrict the union in its activities or make it liable perhaps somewhere down the line in this unexplored field of

legal liability for conduct unauthorized or for damages growing out of a wildcat strike should be taken from the contract and under my advice it was specifically eliminated in 1947.

Q All right. Now, speaking of the "anti-leasing" clause and the "protective wage clause", as it is contained in the 1958 contract, was the purpose of the "anti-leasing" clause and the "protective wage" clause, did that have any relationship to the so-called "favored nations" clause?

A None whatsoever. The "leasing" clause, as it can be demonstrated here historically and chronologically was a labor standards clause, Mr. Combs, and had no relation to the so-called "favored nations" clause even though it may have been denominated "protective wage clause" back in 1941.

Q Did it deal with the sub-contracting and matters of that character?

A It did, sir.

Q All right. Would you then trace then the "anti-leasing" clause?

A It goes back to 1943.

MR. ROWNTREE: Well, that's what I was asking about. I thought your first few questions along this line were addressed to this "land lease" clause or [5341] the "anti-leasing" clause.

MR. COMBS: Well, I started out that way but unfortunately the PWC in 1943 was named "protective wage clause", it was a misnomer.

MR. ROWNTREE: I understand.

MR. COMBS: He got off on the other subjects, so I think counsel will understand why we had to get the two subjects separated there.

MR. ROWNTREE: I see.

A I possibly didn't respond very clearly because

I, myself, get confused because of the use of the same nomenclature "protective wage" clause was entirely a misnomer so far as the "favored nations" clause was concerned, in my judgment, although the 1958 clause, the "protective wage" clause was possibly more nearly aptly named. Now, it was the outgrowth of what Mr. Combs now asked the history of the leasing clause.

THE COURT: How much longer do you think you may be on direct examination?

MR. COMBS: Well, I should say we have 30 or 45 minutes. I would like to finish with him, if I can.

THE COURT: You would like to finish this evening?

MR. ROWNTREE: It is agreeable with us.

THE COURT: All right.

[5342] MR. COMBS: Is that agreeable? He has had two trips down here. I would like to finish with him.

THE WITNESS: I am amenable to anything Court and counsel want.

Q Would you go ahead now? I think counsel very properly pointed out that the "favored nations" clause is one subject. Now we are back on the history of the "anti-leasing" clause.

A All right. It had its inception in 1943 at the termination of the 1941 contract and it grew out of the practice of signatory operators that the union knew by experience were covered by the agreement to sub-contract out work or to avoid the terms of the contract and that was spreading through the coal industry and it led to an attempt of the union in 1943, when it started its negotiations, to try to curb those practices, so there was a contract clause demand or proposal made by the union to the Appalachian Joint Conference on March 9, 1943, when these negotiations looking to a new agreement had opened and that proposal

read as follows, and I quote, "This is the proposal we made for a clause to be incorporated in the new agreement:

"Operators who are parties to this agreement shall include clauses to protect the wage scales and conditions of employment whenever any of their mines are let to any corporation, company or individual for operating
[5343] purposes. This obligation is to protect the contract and preserve the interest of the miners."

And that quoted matter appears on page 114 of the proceedings of the 1944 convention.

Q That would be Exhibit No. 130.

A Now, the negotiations of the collective bargaining efforts to achieve an agreement led to government seizure of the mines on May the 1st, 1943, and thereafter the War Labor Board assumed jurisdiction and after various hearings called by the Board with the parties on both sides present, the Board on June 18, 1943, issued a directive order prescribing the terms and conditions of a contract which they said the operators and the miners were directed to accept and work under pending negotiations of a new collective bargaining agreement.

Now, that directive order of the Board was in Case No. 111-1284 on the docket of the War Labor Board on June 18, 1943, and in prescribing the terms and conditions under which they were directing the parties to return to work there is this reference, there is this clause or wording in Paragraph 8 of the order, "Each agreement shall contain the following provision relating to leased mines:", they are telling the parties to contract that they should negotiate and work. "'The operators agree that they will not let any operating mines subject to this agreement as a subterfuge for the purpose of avoiding the
[5344] provisions of this agreement.'"

That is the wording in the directive prepared

and proclaimed by the Board itself and appears on page 176 and 177 of the 1944 convention proceedings.

Q Which is Exhibit 130 in this record.

A Thereafter the mines, being under seizure, and an attempt was made by the union at the behest of the Illinois operator group to reach a contract, an agreement, which I think I have referred to earlier in my testimony, known as the First Illinois Agreement of July 21, 1943, and it, when submitted, after execution and submitted to the Board, carried in Paragraph 9 the verbatim wording contained in the War Labor Board directive of June the 18th, 1943, in reference to "leasing of mines".

It was lifted verbatim at the government's suggestion in the original instance and carried into the First Illinois Agreement, which was disapproved in part because of the formula used in the payment of the portal-to-portal clause and that appears in pages 183 to 187 of the 1944 convention proceedings.

That failing of agreement, the parties then negotiated what was called the Second Illinois Agreement, dated September 23rd, 1943, and it contained the verbatim wording in reference to "leasing" in Paragraph 11 of that contract, the verbatim wording has been directed [5345] by the War Labor Board in the original instance.

Now, on October the 26th, that Second Illinois Agreement going to the Board for approval, the Board approved it. The only thing that they disapproved was certain wage increases that they said were exceeding the standard that had been set, but it specifically provided that, "Other provisions of the proposed agreement which do not involve wage adjustments, do not require or approval.

And that appears on pages 204 to 213 of the '44 convention proceedings.

Based upon that Second Illinois Agreement of September

the 23rd, the mines, having been released from government seizure, were re-seized, your Honor, on I think on or about November the 1st, of 1943. I can give you the exact date, but they were re-seized and Secretary of Interior—they were seized on November the 1st, 1943, and the Secretary of the Interior was directed to negotiate a contract, which he did, the Ickes-Lewis Agreement on November the 3rd of '43, that had this provision in it, and I quote:

"All of the provisions of the Illinois contract which were not disapproved by the War Labor Board in its decision of October 26th, 1943, shall become effective at the time stated in this agreement."

That appears on page 220 and 221 of the 1944 conventic

Subsequent to that time, the Supplemental
[5346] Wage Agreement of December 17, 1943, that I have previously referred to, negotiated between the parties based on the Ickes-Lewis Agreement, and that contract in Paragraph 13 has the following words:

"The operators agree that they will not lease any operating mines subject to this Supplemental Agreement as a subterfuge for the purpose of avoiding the provisions of this Supplemental Agreement."

The precise provision that the War Labor Board itself at first contrived and directed in its order that I have previously referred to, and that is found on page 247 to 255 of the '44 convention.

Now, this contract was negotiated between the north, the captives in the west, and the union on that date, but was thereafter executed by the Southern Coal Producers Association on June 16th, 1944, and contained on pages 251 to 261 of the '44 convention.

The next step in that history would be the '45 contract dated April 11th, 1945, because Paragraph 14 of that '45

agreement contained the verbatim language that I have just quoted from Paragraph 13 of the contract of December the 17th of '43. It appears on page 126 of the '46 convention proceedings and that contract provides that it must go to the War Labor Board for Approval, and it was
[5347] sent to the War Labor Board and was approved on April 23rd, 1945. This, incidentally, was the first time that a contract ever had been called the National Bituminous Coal Wage Agreement because it was participated in by all the contractors nationwide.

MR. ROWNTREE: Isn't it true that this sentence that he has read there goes all the way up through the 1951 amendment, to the 1950 bituminous——

MR. COMBS: (Interposing) If counsel will stipulate, we can save some time.

MR. ROWNTREE: I certainly will.

MR. COMBS: If counsel will stipulate, Mr. Hopkins, let's go to the '52 amendment.

A I will be glad to except to point out that it also was included by reference in the Krug-Lewis Agreement that was executed at the direction of the President of the United States on May 29th, 1961, included in the '47 agreement, '48 agreement, the '49, '50 agreement and the '51 agreement by reference.

Now, you come to 1952. Now, at that time the '51 contract expired. The experience under the "leasing" clause that I have referred to and the old War Labor Board order had continually been violated by the operators to avoid the terms of the contract that they had from year to year executed. They were using various devices to
[5348] avoid the terms by sub-contracting, by use of subsidiaries and affiliates and other evasive means as the union averred and believed its experience thoroughly demonstrated.

So it led then, your Honor, to the negotiation of the '52 contract that had what we call the "application of contract to coal lands" provision that reads as follows:

"As a part of the consideration for this agreement, the operators signatory hereto agree that this agreement covers the operation of all of the coal lands owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this agreement, or acquired during its term which may hereafter (during the term of this agreement) be put into production. The said operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this agreement."

That appears on page 48 of the '56 proceedings.

The 1955 and '56 contract carried forward that clause by reference in its entirety.

That brings you then to the 1958 contract that included the so-called "protective wage" clause. That appears on pages 33 to 37 of the 1960 convention proceedings.

Now, that came about for this reason, the experience under the original '43 clause and the expanded '52 clause, that had an experience of about six years in there [5349] proved that the practice of many signatory operators continued in the sense of leasing out or sub-contracting their coal to avoid the impact of the terms and provisions of the contract.

MR. ROWNTREE: We are objecting to any explanation of this "protective wage" clause, we think the clause speaks for itself, it is the best evidence.

MR. COMBS: I think that the witness has a right to comment on what the purpose of the union was in doing that, the history of it, at least the circumstances surrounding the negotiation of it, I think that is all he is trying to d

Now, we have letters and statements that the parties

concerned made at the time it was executed that are in the proceedings of the convention that we expect to refer to.

MR. ROWNTREE: I believe in this case that the union could put the witnesses on who know the facts with respect to the union purposes, but we do not want any evidence along this line as to the purpose of the operators in agreeing to this clause.

MR. COMBS: Well, I think that the witness certainly can testify on what the operators said in these negotiations and the statements they made. They have testified already in this case as witnesses.

[5350] MR. ROWNTREE: I object to any testimony in the ensuing questions in respect to any statements made by the operators in these negotiations as to the purposes on their side.

MR. COMBS: All right. We have not asked the witness a question yet for a statement by the operators. If I ask him the question, I think counsel can object then. I haven't asked him anything about what the operators said.

MR. ROWNTREE: All right. And this is admitted only for the statement of purpose and not for the meaning of the contract.

MR. COMBS: Yes.

Q Will you continue, Mr. Hopkins?

A In other words, the union believed that what they would call "chiseling" on the contract by signatories having continued, they were attempting to find something else that would, as they believed, maintain the labor standards that they had bargained for.

Q Do you have in your files, Mr. Hopkins, a statement by Mr. Kennedy, who was negotiating at that time with reference to the purposes of the protective wage

clause at that time?

A Yes, sir, I do, Mr. Combs. I am just trying to look for it here.

On the 25th of November, 1958, while the
[5351] contract was still under negotiation, Mr. Kennedy addressed a letter to Mr. Edward Fox, as president of the Bituminous Coal Operators Association that I prepared at this direction, I prepared this letter, that is, a copy of which I have here that was taken from my files as I prepared it on that date. The original was executed by Mr. Kennedy, the vice president of the union, and was delivered to Mr. Fox the same day.

Now, it states the union's position as to why they were demanding the "protective wage" clause in this collective bargaining negotiation.

Q Would you make that an exhibit to your testimony?

A I will be glad to, sir.

MR. COMBS: I think this is a rather important matter and I think, if you don't mind, we will read that into the record.

THE WITNESS: I will be glad to. It is addressed to Mr. Edward Fox, Bituminous Coal Operators Association, 918-16th Street, Northwest, Washington, D.C.

"Dear Mr. Fox—"

MR. ROWNTREE: (Interposing) If your Honor please—

A (Interposing) "The United Mine Workers of America some time ago presented to you—"

MR. ROWNTREE: (Interposing) May I reserve the
right to object to this after reading it? I think
[5352] he might proceed with the reading and save time, but I would like to have the opportunity to object to it after it has been read.

THE COURT: All right.

A (Continuing) —"presented to you a proposed 'protective wage clause' which we stated should be an integral part of and included in the new national agreement currently under negotiation. This was done because it has become mandatory that the union find a way in which to protect its members employed in the bituminous coal industry against the ever-encroaching evils and practices of subcontracting, the production and procurement of coal not mined in accordance with the wage scales and other terms and conditions of the national agreement, and other companion evils flowing therefrom. Subcontracting by signatory operators is nothing more than pure evasion of their contractual obligation to pay and maintain the agreed standard of wages and, when coupled with other companion evil practices, vitally affects our members because it progressively undermines our members' tenure of employment and results in removing and withdrawing from them more and more work and hence more and more jobs are lost to them.

"As is well known to you, many signatories of the present national agreement, indeed members of your own association, have been, and presently are, guilty of such nefarious practices, thus lending aid and comfort
[5353] and indeed becoming assisting parties to those who seek to debase and lower our standard of wages, hours, safety requirements, work opportunities and other benefits. Our members are entitled to have these standards and benefits protected and safeguarded by contract and this we now in their behalf seek to do.

"The clause as originally presented to you we now understand you find unacceptable. Your proposed 'protective wage clause' as submitted to us today we find entirely inadequate. We now, therefore, submit herewith a revised draft reflecting more precisely the objec-

tives the union seeks to accomplish. We request your consideration of this clause without delay and that we be promptly so notified of its acceptance in order that the new national agreement in all its parts may be drafted and prepared for execution, if possible, prior to December 1st.

"Through the years the Mine Workers have traditionally and consistently sought to obtain for its members contractual safeguards for these wage and work standards, job opportunities and other benefits, which have been achieved only after long and difficult experiences in the bituminous coal fields. As the accredited representatives of men employed in the mines and solely for their protection and benefit, we present this contractual demand, making it for the reasons stated, in good faith,

[5354] believing it a reasonable one, violative of no law, calculated to bring continuity and stability of employment and thus definitely in the public interest.

"We await your reply.

"Very truly yours, United Mine Workers of America by Thomas Kennedy, Vice President."

THE COURT: Exhibit 442.

(The letter referred to above was marked D-442 and received in evidence.)

Q Now, did Mr. Lewis make a statement in regard to that?

A He did, Mr. Combs. When it was achieved on December the 3rd, 1958, Mr. Lewis made a press statement, at which time I was present. It is found in pages 38 and 39 of the 1960 convention proceedings. If you want me to read it, eliminating the matter that does not pertain to the protective wage clause, I can.

Q Will you please do that, just eliminate anything—

A (Interposing) Says, "Under the authority and with the approval of its national policy committee, the United Mine Workers of America has today executed the National Bituminous Coal Wage Agreement of 1958 with the Bituminous Coal Operators' Association. The contract speaks for itself. It carries forward and preserves the terms and conditions of the National Bitumi-
[5355] nous Coal Wage Agreement of 1950, as amended effective October 1, 1956, and contains in addition thereto certain amendments and supplements, summarized as follows."

Then it points out the wage increase, the vacation period and then it says:

"A 'protective wage clause' to correct the manifestly detrimental effects on our membership of subcontracting, the production and procurement of coal under substandard and debased wages and working conditions, and other similar operator practices frequently found in the bituminous coal industry today."

And it sets out that it is a firm one-year contract, subject to termination thereafter on 60-day notice and then continues:

"The wage and work standards, job opportunities and other benefits to which our members are not contractually entitled have been achieved only after long and arduous years of experience in the coal fields. The present and future welfare of the men who daily risk their lives in this most hazardous of industries demand that these standards, opportunities, rights and benefits be maintained, protected and safeguarded by contract. This the union seeks to accomplish by the terms of the protective wage clause, which is to be administered by a joint in-
dustry contract committee of six, divided equally
[5356] between the parties and to be selected within the

next 30 days.

"Because of their indulgence in and frequent fosterin of such evil practices, and perhaps because of some small attendant costs which may be involved in their elimination, the coal operators have been loathe to adm these practices and to consent to their correction by co tract. Reluctantly they today make their confessions and agree to 'go and sin no more.'

"We are confident that the terms of this contract are reasonable ones, calculated to maintain the living stand ards of our members and to bring continuity and stabili of employment. Certainly these things are much to be desired and are definitely in the public interest. Acco ingly, we believe that time will serve to assuage the presently ruffled spirits of the operators and that they will soon come to realize and publicly admit that this contractual recognition of their employees' needs and their reasonable demands, gauged by all modern stand- ards, is fully justified and morally right. Since the signatory captive mine operators consume their own entire output of coal and are not engaged in the commer cial field, the protective wage clause is not included in the contract as executed by them."

Then it goes on with a closing paragraph, bu [5357] that is the explanation.

Q Now, Mr. Fox, the president of the Bituminous Coal Operators, I believe, made a press statement after the execution of that contract, but I think this has already been read in the record.

A It appears on page 39 of the 1960 convention proceedings and the statement was made in my presence

Q All right. Would you read that part that has to do with the "protective wage" clause?

A The opening part makes a statement referring

to vacation pay for the duration of the contract then says:

"The agreement covering commercial operators, also contained a 'protective wage clause,' which was not a part of the separate agreement covering the so-called 'captive mines.'

"The association agreed to this protective wage clause for commercial operators under extreme union pressure and only to avoid an interruption of the supply of the world's most dependable fuel to coal consumers."

Then it goes on to say that we are now able to advise and be able to furnish them coal.

Q Well, Mr. Hopkins, what happened to that 'protective wage' clause?

A Mr. Combs, after some time elapsed, the joint industry contract committee of six members,

[5358] as was required by the clause itself, were named, but prior to any attempt by that joint committee to enforce any part of that clause the Landrum-Griffin Act, your Honor, was passed in September, 1959, and it, in the judgment of the legal counsel, including myself, of the union, raised serious questions as to the legality of the clause that the joint industry committee on November the 4th, 1959, by resolution suspended and held in abeyance all of the complaints that were then filed and all proceedings thereunder pending clarification of the Act and a later review of the situation by the committee—now, time ensued—as to just what the clause would mean, what 8(e), that was 8(e) of Landrum-Griffin Act or, rather, it was 8(e) of the National Labor Management Relations Act carried into the Landrum-Griffin Act itself that denounced the execution of contracts that had for its purpose the illegal subcontracting or bargaining.

Q The so-called "hot cargo" provision, I believe?

A "Hot cargo." So after the first resolution of the suspending the application and enforcement of the contract another one was adopted by the committee on July 27, 1960, awaiting the outcome of the legal events or legislative studies of the applicability of the Act.

Now, on March 31st, 1964, the joint industry committee was formally dissolved because that was after the 1964 National Bituminous Coal Wage Agreement [5359] was executed, from which this "protective wage" clause was specifically and totally eliminated by——

Q (Interposing) Now——

A (Interposing) Pardon me.

Q Go right ahead.

A Prior to its dissolution of the committee, however, as I have just related, unfair labor practice charges were filed, I think this was on November the 29th, 1962, charging illegality of this clause under Section 8(e) of the National Labor Relations Act as it had been enacted as part of the Landrum-Griffin Act and a complaint issued on the 7th of February, 1963, and it later went to the Board, which, on August the 27th, 1963, in Board Case No. 5-CE-6 entered a decision and order that held the PWC violative of Section 8(e), whereupon the union filed a motion for rehearing even back on September the 20th, 1963, for the reason, your Honor, that of the three members who had participated in that decision, one of them resigned right afterwards or his term expired and a new member was named.

We asked for a reconsideration in banc because of the gravity of the question and obviously the position of the members of the board was not truly reflected under those situations so the Board took that motion or petition

for rehearing in banc and on the 12th of December, 1963, it denied the motion saying, among other things,

[5360] "Being unable to arrive at a majority decision, the motion fails for lack of majority."

Now, thereafter came the 1964 contract that I have described that eliminated PWC.

Subsequent to the negotiation of the '64 contract two charges of illegality or violations of Taft-Hartley were filed by two operators, I think Dixie Mining and Riverton Coal Company, alleging illegality of the new clauses in the new contract.

Whereupon, the union, believing that the new contract was not in violation of the statute and was not violative of the outstanding order of the Board of August 27th of '63, filed a motion with the Board, and tendering the new contract, alleging that it was in compliance by virtue of this contract with the old outstanding order of the Board of August, 1963, because the new contract on its face eliminated the "protective wage" clause and therefore the "80 clause" that we referred to it as, we averred was not violative of the Act, and we were in compliance.

Whereupon the Board took an unusual proceeding, but it issued a rule to show cause as to why the union's position alleging compliance and moving that the case be closed, issued a rule to show cause why that should not be done wherein these two charging companies intervened and they did intervene and they, along

[5361] with the company, filed briefs holding that it was illegal, the new contract, 8(e), violative of 8(e). We filed briefs to the contrary and then the Board, in what it called a supplemental decision on the 7th of August, 1964, in the same old 5-CB-4 case held in a 2 to 1 decision that the new contract was violative

of 8(e). One Board member dissenting and that may be found in 48 NLRB, Section 31 or 56 LLRM 1471.

Now, when that occurred the union petitioned, went to the Court of Appeals in the District of Columbia with a petition for review of that supplemental order of August the 7th as it had to do with PWC and the 80 cents, and the Board filed a cross petition to enforce and, oh, I think it was along in April the case was heard by the Court of Appeals. Mr. Boiarsky argued it, others were on brief, and in the Court of Appeals on the 4th of August of this year, 1965, in a case styled Lewis versus NLRB, found in 55 LLRM 2964, remanded the case back to the Board for further proceedings.

It stated, among other things——

Q (Interposing) I think, Mr. Hopkins, it would be sufficient to say that it is still before the Board on remand with the idea that the Board should take cognizance of certain decisions that the Court of Appeals had made subsequent to the action of the Board.

A Yes, it did, said so long as the contract [5362] clause sought to protect, to preserve the work standards of the union shop that had been maintained for that that under their decision they remanded it to the Board.

* * *

[Printer's space]

[5364] Q Mr. Hopkins, at the close of your testimony on yesterday, you had just talked about the remand from the Circuit Court of Appeals of the case that involved the "protective wage" clause.

Do you have in front of you the main part of that opinion concerning the remand on why it was remanded?

A Yes, Mr. Combs, I have a copy of the opinion, slip opinion as was issued by the Court on August the 4th, 1965.

Q Would you make that slip opinion an exhibit as far as part of your testimony and read from that the main part of it?

[5365] A I will be glad to.

Q Just a minute. Let's get it in as an exhibit.

A Judge Bazelon, speaking for the Court at Washington, said, and I quote, "The National Labor Relations Board found" "that the Protective Wage Clause of the National Bituminous Coal Wage Agreement of 1958 violates 8(e) of the National Labor Relations Act." "The Board characterized the clause as a 'Union Standards Clause.' In several cases decided after the Board's order here, we held that such a clause would not ordinarily violate 8(e) so long as it was 'germane to the economic integrity of the principal work unit' or sought 'to protect and preserve the work and standards the union has bargained for.'"

Citing Orange Belt District Council case and Truck Drivers Union case and continuing, "We think the Board should have an opportunity to reconsider the applicability of 8(e) in light of these recent cases. Accordingly we remand."

Q Would you make that an exhibit to your testimony?

THE COURT: Exhibit 443.

(The slip opinion referred to above was marked D443 and received in evidence.)

Q Mr. Hopkins, has the Board done anything in connection with the remand since the opinion?

A It has not, sir, it lies there on the remand

[5366] Q Now, Mr. Hopkins, you have testified heretofore concerning the memorial period and "able and willing" clauses. Would you give a brief resume of the history of the memorial period clause in the contract?

A I will be glad to, Mr. Combs. It first appeared in the Appalachian and the Southern Wage Agreements in 1941 in the last paragraph of, the section of that contract that was denominated "Safety Practices" and that clause read as follows in those two contracts:

"The International Union, United Mine Workers of America, may designate memorial periods provided it shall give proper notice to each district."

Now, your Honor, that was inserted in that contract at that time because years prior to that time the union had constantly sought the enactment of mine safety legislation that would provide a safety code for inspection and enforcement procedures of the safety that they could acquire by contractual arrangement with the operators and the Federal Coal Mine Safety Act had been enacted by the Congress on May 7, 1941, under the terms of which the Bureau of Mines was by that act given the right to make annual inspections and had certain advisory powers pertaining to safety and health conditions, but no safety code or standards of safety or the rights to enforcement were contained in that bill. So the clause was intended to supplement what it had partially achieved

[5367] in the way of safety legislation and it was not

until the act, the mine safety bill was enacted on July 16, 1952, where the standards and rights of inspection and enforcement were statutorily obtained and written into the statute by the Congress.

So this memorial clause thus inserted in the contract from that time forward has been traditionally used to serve to publicize the mine disaster at the time it occurred and to emphasize the continuing necessity of better enforcement of safety rules and enactment of further measures, all looking to the promotion of safety of the working conditions in the mine and that is epitomized further chronologically in the fact that the Krug-Lewis agreement on May 29, 1946, enacted after mines had been seized by the Presidential proclamation and the contract negotiated under Presidential directive by the Secretary of the Interior, that agreement provided for the promulgation of a Federal Mine Safety Code.

For the first time the Mine Workers were able to obtain such a contract. That was accomplished under the mandate of that clause in the contract and the 1947 National Bituminous Coal Wage Agreement thereafter enacted adopted the code that had been prepared and promulgated by the Secretary of the Interior and the Mine Workers in accordance with that contract provision, the safety code being promulgated on July the 24th,
[5368] 1946. So the 1947 contract carried forward that safety code and also contained in subsection (f) of that division of the contract what we call "memorial periods" and it was the verbatim language that had been contained in the original 1941 contract to which I first referred.

Now, further, when we come down to 1950 we find that when Judge Keech issued the Penello injunction at the behest of these hundred-odd operator charging companies

and associations upon which the General Counsel sought and obtained the injunction, we find Judge Keech in that injunction mandating the union and restraining it as against the further use of the memorial period clause as they had used it during 1948 and '49 as the operators said it had allegedly constituted an unfair labor practice.

So under that mandate of that injunction and under the mandate of the simultaneous, almost on the same day of issuance at least of the federal emergency injunction, obtained at the behest of the Attorney General of the United States under Presidential direction, that mandated these companies, who were charging us with an unfair labor practice charge, charging them as co-defendants, they were mandated along with us to negotiate at the hands of Judge Keech, under that second injunction to bargain collectively and negotiate a contract within the four corners of the mandate and the restraints contained in the Penello injunction.

[5369] So under that situation the memorial period in the 1950 contract was changed from the wording that had been there since 1941 so as to read as follows in the 1950 agreement, and the 1950 agreement carried this language in subparagraph (f), "The International Union, United Mine Workers of America, may designate the memorial periods not exceeding a total of five days in the period ending April 1, 1951, and not to exceed a total of five days in the period from April 1, 1951, to June 30, 1952, provided it shall give proper notice to each district."

Now, the National Bituminous Coal Wage Agreement of 1950 followed exactly the same pattern because it contained subdivision (f) that reads as follows:

"The International Union, United Mine Workers of America, may designate memorial periods not exceeding

a total of ten days during the term of this agreement, provided it shall give proper notice to each district."

Now, that has been carried forward, your Honor, by reference in each succeeding agreement since 1952 up to and including the 1964 agreement.

Q I take it then from your description of the chronological history of that clause that the main change simply was to limit the time of the memorial period and to provide a notice to be given in advance.

A Precisely, sir, that is correct.

[5370] Q Now, Mr. Hopkins, you have testified with reference to this Keech injunction, the Penello injunction, we call it.

Did there come a time while the negotiations were going on under the mandate of that injunction when the counsel or the Southern Coal Producers asked for a conference with Judge Keech in connection with whether or not they were compelled to bargain in that conference, do you recall such an incident that arose?

A Yes, sir, I do, Mr. Combs, because at the issuance of the national emergency injunction the union immediately instructed its policy committee. Negotiations ensued with the operator representatives according to the mandate of the Court on the basis of the restraints contained in the Penello injunction. Members of the Board of Inquiry then appointed and were active in behalf of the President and attended those sessions and on a given occasion, Mr. Combs, Mr. Gall, as counsel for the Southern Coal Producers Association, in these joint conferences demanded that the union meet separately with him and apart from the other operator representatives.

The union demurred on the ground that they were mandated by the Court to meet jointly and to bargain collectively.

Whereupon, Mr. Gall, in behalf of the Southern Coal

[5371] Producers Association, made representations to Judge Keech and hailed us before Judge Keech, Mr. Combs, and I attended in behalf of the union, at which time he made his position known to the Court and Judge Keech very quickly, as I recall rather vividly, told him that his injunction meant precisely what it said, that they were to negotiate jointly and he made it very clear, Mr. Combs, that if anybody left that joint conference they would leave it at their peril.

Q Now that would have been some time between February the 11th, 1950, and March the 5th, 1950?

A Yes, sir, because that occurred during the time we were in joint negotiations, but while that was in progress the government then filed a motion asking that we be ruled in contempt of the emergency injunction and while the negotiations—

Q (Interposing) May I interrupt to ask you a question? What was that based upon, were the mines working at this time?

A No, sir, they were not.

Q And the basis of the allegations of contempt was that the union had not put the men back to work?

A That is right, even though, as it later proved on the trial of the charges of civil and criminal contempt, the union had, on February the 11th, directly communicated the restrictions in the orders of the Court

[5472] in both injunction proceedings to its district presidents and to its local unions, so when the rule to show cause why they should not be held in contempt came on for hearing, Mr. Combs and Mr. Boiarsky and myself, I had to leave the bargaining conferences to attend that session, and after a period of three days' hearing the Court, Judge Keech, from the bench at the close of argument acquitted the union of all charges of

civil and criminal contempt and, I might add, Mr. Combs, that was on March the 2nd, and I returned to the bargaining sessions that night and they continued almost continually up to and including Saturday night of March the 4th, along about one or two o'clock in the morning we achieved the contract of agreement between the parties and it was signed on Saturday morning, but it came about only after we had been under the surveillance and scrutiny of the Court, the Board, the Board of Inquiry, the Labor Board, the President of the United States, and following the acquittal on contempt, and I can say to you, Mr. Combs, at that time that it was the end result of the most hard-nosed, arms-length bargaining that I have ever experienced in my judgment, I know with a complete capitulation by the operators on the dollar value that was involved, to-wit, the wage increase that the union had constantly been demanding since the negotiations opened in May, 1949, and had been constantly refused by the operators, and under those conditions the contract was achieved.

[5373] We thereafter complied, as I testified on yesterday, with the mandate of the Court through the hearings on the Labor Board injunction and we were later—and those two injunctions under those conditions were later dismissed.

Q Now, just one brief reference to this contempt acquittal that you are talking about. Did the government take a special appeal from that to the District of Columbia Court of Appeals?

A They did, sir. They took a special appeal to the Circuit Court of Appeals of the District of Columbia and forced us into a very early hearing, as you will recall.

Q And that was while the bargaining sessions were

going on. Do you recall whether or not that we had to split our forces in order to attend?

A We certainly did, and I recall, Mr. Combs, on one occasion in those proceedings you went to the court and I went back to the bargaining session and undertook to try to divide our forces so as to comply with the requirement of the occasion on both directions.

Q Was this appeal in the District of Columbia eventually dismissed?

A It was later on by a unanimous court.

Q Now, there is one more thing that I wanted to ask you in connection with the agreement, the negotiation of an agreement that you have been testifying [5374] about here, that is, the 1950 agreement and the subsequent agreements.

Q To your knowledge at any time was there any kind of an understanding or an agreement on behalf of the union or any of its representatives that they would impose the contract, the same wage contract, upon other employees other than those who were bargaining at that particular time, to your knowledge was there any such understanding?

A No, sir.

Q Now, Mr. Hopkins, to get back to the "able and willing" clause of the contract provision, would you give a brief chronological history of that clause as you know it?

A It first appeared in the 1947 National Bituminous Coal Wage Agreement as amended. At the end of the last sentence of the first paragraph of the contract, we call it the "Witnesseth" paragraph and pertaining to the conditions of employment and it read as follows, referring to the time the men would work, "during such time as such persons are able and willing to work."

That appeared in the contract for the first time at that time for this reason, and I think I touched on it briefly yesterday, your Honor, at the time that '47 contract was negotiated Taft-Hartley or the Labor Management Relations Act of '47 had just been enacted but it had not yet become effective, so we knew that the negotiations for an agreement had to be in light of the newly enacted
[5375] statute and for whatever dangers or threats or difficulties that might be involved in it in the administration of a contract for any actions flowing from it in the future because for the first time this act placed jurisdiction in a Federal Court for actions against a labor union for an alleged breach of contract.

THE COURT: What year did you say it first appeared in the contract?

THE WITNESS: 1947, but it appeared there after the statute had been enacted but before it became effective, I think, on or about the first of September.

Q I believe that the act was enacted some time along in June and the effective date of the act by its terms was some time the last of August.

A That is right.

Q Approximately.

A That is right and this contract was negotiated after enactment but prior to the effective date.

It was enacted because it was felt, at least by counsel for the union, and I think by its officers, that because of this clause placing jurisdiction for alleged contract violations in the Federal Court for the first time it was felt that some legal protection should try to be given by contract to the International Union as against claims that would flow for wildcat strikes or unauthorized
[5376] strikes for alleged violations of contracts that the union might be faced with in the future and

it thought that this would probably grow in importance due to the enactment of the Section 303, the jurisdictiona section of the act, and it was felt it would be some legal protection to the union and in addition the union felt that it could be generally protective to the working members as an aid in safeguarding their rights to enforce safety conditions when they were actually working in the mines and immediate unsafe conditions would arise.

Q Let me ask you a question about that. I don't want to interrupt your thoughts. Had there been various occasions where there had been strikes that the men claimed that these conditions were very unsafe and yet the union was being charged with trying to get those men to go back to work under those situations, is that what you have reference to?

A Yes, sir, Mr. Combs. There had been numer ous instances like that in various parts of the coal fields and we were aware of it in a legal sense and that we felt that with this broadening jurisdiction that it was proper and in an attempt to protect the interests of the union to ask and seek such a contract clause.

I might add that, however, this "able and willing" clause again, your Honor, under the mandate [5377] of the Penello injunction, and in which the union was prohibited from seeking this clause in a new contract, why, that clause was eliminated from the new agreement and because we were enjoined from seeking its renewal in a successor agreement, which we would otherwise have done.

Q Now, in connection with the negotiations in June of 1949, that commenced, I think that you have testified that they lasted from some time in June of 1949 up until the execution of the contract of March the 5th, 1950, would you give a history of the so-called 3-day work

week as you knew it to be involved in those negotiations? Will you explain that, please?

A Of course, Mr. Combs, the 3-day work week has never been in any contract or any collective bargaining agreement as a contract, as a contract clause, and there was no such provision in the 1948 contract when it drew to a close on June 30, 1949, and that was the termination date written into the 1948 agreement, June 30, 1949.

The negotiations looking to a successor agreement were in progress, and there were three of them, there was three separate conferences, one at White Sulphur Springs beginning on June the 22nd and terminating October the 21st, 1949, the captive mine conference had one meeting in Philadelphia and thereafter in White Sulphur Springs beginning June 13th and terminating October the 21st.

[5378] Q Now, Mr. Hopkins, if it won't interrupt your line of thought, why was that conference terminated? What do you mean the "Northern conference"? Who terminated that conference?

A The operators got up over our objection and walked out and said, in substance, Mr. Love speaking for them, "There will not be another dollar granted in this conference. We will not raise the wage scale. We have told you that we are going to leave the conference. Good day."

And they walked out over our protest, we asking them to continue the conferences and Mr. Kennedy, our vice president, vehemently undertaking to ask them to stay.

Q Would you continue?

A The Southern conference convened at Bluefield, West Virginia, beginning May 25th and terminated November the 2nd, 1949, and those conferences for the union

were being conducted by Mr. John Owens, and the same thing happened there, as I know, that was terminated over the objections of the union when Mr. Joe Moody, spokesman for the Southern Coal Producers Association, said, in substance, "We are not going to grant you any wage increase. We have told you so. We are at the end of the road. We walk out." And that closed the conference over the Mine Workers' objection.

We were saying to them, your Honor, that
[5379] all these matters, and I was present when many of them took place, "All of these matters are negotiable, there is no condition precedent in the union's position," and that was steadfastly our position, but, nevertheless, we were adamantly met with the flat statement from beginning to end, "There will be no wage increase."

Upon that the operators terminated the conference, but thereafter the conferences reconvened. I might add the three conferences resulted from termination notices that had been given by the Southern Coal Producers themselves. They began by a termination notice given by it to the union and on April the 21st, 1949, then the union gave notices to all of the other signatories, except Southern Coal Producers and the captive mines on June the 14th of 1949, and then a notice to the captives from the union dated May 13, 1949. These notices are set out in Pages 32, 63 and 148 of '52 convention proceedings and from that the three conferences arose.

Q Now, I believe that you have testified that these negotiations which you testified were terminated did not resume until January and, as a result of these Court orders?

A That is correct, sir, they resumed in January in Washington. Now, I, of course, they culminated

under the court auspices in the new contract,
[5380] but during this entire period of time, as I think I mentioned briefly a bit ago, the union was saying that there were no conditions precedent and that was for several reasons. The reasons the union and its officers, and certainly its counsel, your Honor, were aware of the danger and their ability to negotiate a new agreement with any one or all of these three groups if a national emergency should develop because of the shortage of coal supply, because we recalled, and I certainly recalled them vividly, the difficulties that the union had found itself in on two previous occasions under two other injunctions, one in 1946, prior to Taft-Hartley, with the President acting under his, as we say, alleged constitutional powers, invoked an emergency, put the mines under government control, we negotiated an agreement, and in the course of it differences of applying that contract arose and work stoppages started and we were cited for contempt of an act brought by the government under a declaratory judgment proceeding in which they averred that we had no right under the Krug-Lewis agreement to terminate the contract, we giving notice of termination that we averred under the contract terms that brought a declaratory judgment proceeding against us and a temporary restraining order without notice was issued by Judge Matt McGuire one night about twelve o'clock, and I was served about three o'clock in the morning, a contempt of that order, and we went to trial on that issue for the declaratory judgment proceeding.
[5381] We were held, the union and its president were held guilty of civil and criminal contempt of that temporary restraining order by Judge Goldsboro and were fined three and a half million dollars, the union, and the president $10,000, even though the declaratory judgment

proceeding lay there and the rights and duties under it were never determined.

That case went on a special appeal to the Supreme Court of the United States directly from the court below and the Court, I think that in March of 1947, by a divid Court, some five or six different opinions being writte there was an affirmation of the Court below but a remi titur of a million eight hundred thousand dollars of the fine.

We were aware of that and reminded of it in 1949 an we knew also that in 1948 after Taft-Hartley had been enacted and at the time the Welfare and Retirement Fun was on a complete dead center and unable to function so far as activating the pensions were concerned, work stoppages occurred all over the coal jurisdiction and th national emergency sections of the Taft-Hartley were invoked at the Presidential direction.

A Board of Inquiry was appointed, held hearings and then they went for a national injunction and it was again issued, a temporary restraining order without notice,

and we were then put to the test again of a char
[5382] of civil and criminal contempt at the hands of

the government and we were convicted again, although we averred the facts and circumstances that we felt justly entitled us to an acquittal, and we were fined a million four hundred thousand dollars and the presiden of the union was fined $20,000.

In that case, which on appeal was finally affirmed against us, and we had to pay it off.

Q Let me ask you this question, Mr. Hopkins: In each of these situations of contempt the basic charge wa that the union had not gotten the men back to work to pro duce coal?

A That is right, in compliance with the restraints

in the temporary restraining order.

Q All right, sir. Go right ahead.

A We recalled when the negotiations were going on in '49 that both of these injunctions were instituted by the Government of the United States against the union and were always grounded in their averments that they were critical shortage of coal supplies that might adversely affect the national interests.

So with that in mind we, knowing from the operators and admissions, that only three days actual work was prerequisite during that period of time in the summer of '49 to supply the market demand, we attempted to conduct these negotiations the three ways that I have [5383] described, so as to keep these three operating negotiating groups off of base inasmuch as we knew that the contract was going to expire by limitation or of its terms on June the 30th, and the bargaining pressure was to be kept on each of the three representatives so as to maintain, as we averred, adequate stockpiles of coal on top of the ground to avoid the creation of any national emergency that might bring about a recurrence of the difficulties we had had in '47 and '48.

So the union used what it called the "3-day work week" in its negotiations in an attempt, as I said, to keep the pressure on the operators looking to the negotiations of a new contract agreement and between one or two or three or all of them or singularly and yet avoid this national emergency situation.

That is epitomized, your Honor, in the fact that on the 30th of June the union, through its president, Mr. Lewis, announced the promulgation of what was termed a "3-day work week."

Q Now, Mr. Hopkins, without interrupting your line of thought, before the promulgation on the part of

the union of this 3-day work week, had the union protest to the operators that pending the execution of the contra during the negotiation period that the operators agree to work three days a week?

A In the Northern conferences in White
[5384] Sulphur Springs that suggestion was discussed, not as a contract clause, Mr. Combs, because it had never been a contract clause, wasn't intended to be a contract clause, wouldn't have been accepted had it been offered by the operators, but it was suggested that they work, the suggestion was made in the Northern conference but not in the Southern conference.

Q What happened to that suggestion, did the operators acquiesce?

A No, sir. They refused it and refusing it in the North, I recall quite well Mr. Lewis left the bargaining conferences on June the 30th, walked outside and made known to the press the promulgation of the 3-day work week and made his statement at that time enumerating the reasons for it and its purposes. And that reads as follows, it appears on Page 47 of the 1952 proceedings, convention proceedings:

"In the several collective bargaining conferences there exists many and varied undetermined and as yet unresolved questions and problems. Agreement upon these questions is essential and desirable.

"Expert opinion in the coal industry by operators and mine workers warrants the judgment that three days a week working time is adequate to meet all requirements pending the resolution of such questions and problems."

And I might interpret there, if you will pardon me, to recall the fact in response to your question a
[5385] while ago further, Mr. Combs, when it was discussed in the conferences it was made clear that

if agreement to work under those conditions pending negotiations of a new agreement, I recall quite well that it was precisely said that the arrangement was terminable at will.

Q All right.

A Continuing Mr. Lewis' statement:

"Above-ground coal supplies presently available and the tonnage to be produced under this temporary working agreement will avoid any possible emergency and fulfill all national requirements while the wage conferences continue to function. The action taken by the Mine Workers should allay any apprehensions and will operate to rationalize the processes of collective bargaining in the industry.

"This temporary working arrangement is effected and independent of and not intended to affect any of the rights of the negotiating parties heretofore accrued or accruing under the terms of pertinent federal statutes. The arrangement exemplifies the intent of the Mine Workers to make a good-faith contribution to the industry bargaining conferences and to remove the stresses and strains which would cause industry and public irritation."

Q That is contained in Plaintiffs' Exhibit 133?

A Page 47.

[5386] Q On Page 47. Now, Mr. Hopkins, I may have misunderstood, I believe in the third paragraph there you read that as "working agreement." It is "working arrangement," is it not?

A I certainly did misread it if I said that because it certainly reads, "the tonnage to be produced under this temporary working arrangement."

Q All right.

A I may have misread.

Q I may have misunderstood you.

A I certainly did if I said "agreement."

Q All right. Then will you go ahead?

A At the same time there was forwarded to all the local unions, your Honor, a notice of the promulgation of the 3-day work week on the 30th of June, 1949, and that notice reads as follows—

Q (Interposing) Now, that is contained where?

A On Pages 47 and 48 of the 1952 convention proceedings.

Q All right, sir.

A It reads as follows, this is the union to all of its local unions:

"The wage contract in all bituminous districts expires on June 30th. Three wage conferences of magnitude are in session. Additional time is required to realize expectations for a new agreement. It is desirable
[5387] that this time be utilized under conditions of the least possible strain upon our membership, the industry and the public. You are, therefore, advised and instructed as follows:

"All members in all mines heretofore under contract will return to work Tuesday, July 5th." I might say that the miners' vacation period by contract intervened, "and produce coal three days; namely, Tuesday, Wednesday and Thursday. Each following week thereafter, until you are further advised, the work days will be Monday, Tuesday and Wednesday, on which days coal will be produced. All other work except the production of coal may be performed without restrictions in accordance with the usual practice." That is to maintain safety standards.

"In all mines west of the Mississippi River, the production of coal is not restrained by the 3-day limitation. Coal production in that area must begin on Monday and

continue consecutively during the week for the number of days worked by the mine; however, under no circumstances is coal to be produced on Saturday which is under this policy an idle day as such.

"Operators of all mines will be expected under this policy to maintain the same terms, wages, hours and conditions of employment heretofore existing under the agreement expiring June 30th. Local unions will immediately report to their proper district the identity
[5388] of any coal company refusing to cooperate with this policy.

"The arrangements herein set forth are subject to change without notice upon receipt of authorized instructions by the local union from the United Mine Workers of America.

"The cooperation of each member with this policy is requested."

Signed, "John L. Lewis, President; Thomas Kennedy, Vice President; John Owens, Secretary-Treasurer."

Q Now, Mr. Hopkins, was a statement issued in connection with this 3-day work week by the president of the Southern Coal Producers?

A It was, Mr. Combs. The president of the Southern Coal Producers Association, Mr. Joseph E. Moody, on the next day, July the 1st, issued a statement appearing at Page 48 of the proceedings of the '52 convention. I might add, as the statement will show, that the 3-day work week had not been discussed in the Southern conference at Bluefield in contradistinction to the mention that I have made because they had been made in the White Sulphur conference for the bargaining tactic arrangement that the union had, as I have related, and that statement reads as follows:

"Mr. John L. Lewis, President of the United Mine Workers of America, has now ordered the members of

his union to report for work only three days a
[5389] week, beginning Tuesday, July 5th, and to continue on a 3-day week basis until further notice.

"The United Mine Workers of America did not ask Southern Coal Producers' Association to agree to this program and it has not done so. The action taken was the unilateral action of the union alone. This was not even a subject of discussion between United Mine Workers of America and Southern Coal Producers' Association. This association has taken the position throughout current negotiations that the new contract should forbid and penalize limitations of output through strikes, memorial periods, stabilization periods, or partial work weeks imposed by the union.

"Our members are desirous of operating their mine and providing work for their employees to the fullest extent warranted by available orders for coal and by costs of production. A 3-day work week is uneconomical and will result in higher costs because of the idle expense and overhead which will have to be spread over the lower output.

"The association is recommending to its members that during the period until a new contract is made, they continue as they have in recent months to operate their mines and offer work to their employees as many days per week as costs and available orders permit."

MR. ROWNTREE: May I inquire what page
[5390] that was on?

THE WITNESS: On Page 48 of the '52 convention.

MR. COMBS: Exhibit 133, Mr. Rowntree.

Q Now, did there come a time—

MR. ROWNTREE: (Interposing) May I just have a second on this, please?

MR. COMBS: Sir?

MR. ROWNTREE: May I have just a moment?

MR. COMBS: It's on Page 48.

THE WITNESS: I think I had the right page.

MR. COMBS: Yes, Page 48 of the 1952 proceedings under the heading "Statement of Mr. Joseph E. Moody Regarding 3-day Work Week, July 1, 1949."

MR. ROWNTREE: All right, sir. Go ahead.

Q All right. Now, did there come a time, Mr. Hopkins, when the policy committee of the Mine Workers issued a statement in connection with this?

A Yes, sir. This 3-day work week under the terms just outlined continued from the time of issuance up until the time that the policy committee convened in Chicago on November the 9th, 1949, at which conference I happened to be present and at a time when there was an alleged growing shortage of coal. Pleas from Governor Adlai Stevenson of Illinois, the Governor of Indiana and others for more coal, but at this time of the policy committee meeting—

Q (Interposing) Let me interject. When [5391] was your testimony as to when this 3-day work week started?

A June 30, 1949.

Q All right. Now, we are at November 9th?

A 1949.

Q All right. Would you read that statement?

A Policy committee adopted a resolution.

Q Now, that is contained on what page?

A On Pages 91 and 92 of the 1952 convention and it reads as follows—

Q (Interposing) Just a minute, let counsel find it.

MR. ROWNTREE: Which page are you talking about?

MR. COMBS: Ninety-one.

THE WITNESS: Ninety-one and 92, Mr. Rowntree.

MR. COMBS: Of the '52 proceedings, Exhibit 133.

MR. ROWNTREE: All right, sir.

A "As an act of good faith designed to contribute to the public convenience the United Mine Workers of America will again make another contribution of major magnitude to enhance the remote possibility of agreement being reached. The policy committee exercising its discretionary authority derived from a constitutional convention has adopted by unanimous vote the following resolution:

"'RESOLVED that the members of the United Mine Workers of America in all bituminous coal dis-
[5392] tricts east of the Mississippi River are instructed to resume immediately the mining and production of coal to continue until midnight, Wednesday, November 30, 1949, under the terms, wages and conditions of employment hitherto in effect under the wage agreement which expired July 1, 1949. Officers and representatives of the union are instructed to implement this policy. The cooperation of each member with this policy is requested.'

"Officers and scale representatives of the union during this period will participate in such wage conferences as may eventuate in conformity with recognized policy. It is urged that private householders and public institutions provide themselves ad interim with necessary coal supplies to tide them over a further suspension period in the event that the contemptuous arrogance of the coal operators remains undiminished."

That is the end of the statement. And on the same day a telegram was sent by the International officers to each bituminous local union east of the Mississippi River, dated November the 9th, appearing on Page 92 of the '52 convention, reading as follows:

"The national policy committee meeting in Chicago today has directed each member of our union in all bituminous coal districts east of the Mississippi River to resume work immediately under the wages,
[5393] terms and conditions of the contract which expired July 1, such work to continue until midnight, Wednesday, November 30, 1949. Policy committee requests the cooperation of each member and local officers should instruct their members accordingly."

Signed by Lewis, Kennedy and Owens as the three International officers.

Q Did there come a time when the policy committee adopted another resolution concerning the 3-day work week?

A Yes, sir. The 3-day work week being suspended by the actions just recited and full production being had under the terms of the contract subsequent to November the 9th, the policy committee of the International Union met in New York City, as I recall, and they at that time took further action in the form of a resolution that was adopted by that committee and recorded in Pages 95 and 96 of the 1952 convention proceedings, the effect of which —if you want me to read that?

Q Wait until counsel finds the page.

MR. ROWNTREE: Go ahead.

Q All right. Go ahead.

A "Greetings:

"You are advised that the national policy committee of the United Mine Workers of America, in session in New York City today, and acting within the grant of authority from an International Convention, adopted the following resolution:
[5394] "'RESOLVED:

"'That the membership and officers be in-

structed as follows:

"'1. Effective Monday, December 5, and continuing thereafter until further notice, all mine workers will work only the first three days of each week; namely, Monday, Tuesday and Wednesday. Only the irreducible minimum of maintenance work will be permitted on Thursday, Friday and Saturday. This applied to all bituminous coal mines in the United States and all anthracite mines within the jurisdiction of Districts 1, 7, 9 and 28.

"'2. The executive officers and scale representatives are authorized to make wage contracts with any or all individual coal companies. When such contracts are negotiated, the 3-day week operating limitation becomes non-effective.

"'3. The President of the International Union and his official associates are hereby instructed to administer effectively this policy and are given discretionary authority to meet any requirement of principle or detail necessitated in the execution thereof.'"

That is the end of the resolution and continuing with the statement:

"The members of the policy committee have
[5395] arrived at the conclusion set forth in the above-quoted resolution after the most serious consideration of all the facts and circumstances affecting the interests of our union and its membership. The members of the policy committee recommend to each member complete cooperation and support of the policy herein defined.

"By order of the national policy committee."

Signed by Lewis, Kennedy and Owens as the International officers.

Q Now, was the statement made later on December

the 6th, 1949?

A Yes, sir.

Q Following the issuance of this?

A Yes, sir.

Q Would you refer to that, please?

A Subsequent to the New York policy action of the policy committee just recited there was negotiated, as I believe I placed in the record on yesterday, a contract that was referred to as the National Bituminous Coal Wage of 1949 or sometimes called the Intermediate Agreement of December the 6th, 1949.

Q Excuse me. I believe you testified that that contract was executed with certain companies in Kentucky?

A Virginia and West Virginia.

Q Virginia and West Virginia.

[5396] A And later adhered to by other companies in Ohio, Illinois, Pennsylvania and elsewhere.

Q All right, sir.

A But that contract thus negotiated by Messrs. Hodges, Birchfield and Combs in behalf of the operators, as I believe I testified on yesterday, first covered only about 2,000,000 tons of coal and maybe 30,000 or so workers, but later it was adhered to by many other companies and I will later recite that, but at the time that contract was executed and promulgated a statement announcing its execution was made by the union and, among other things, it was said in reference to the contract, after describing it, the following—

Q (Interposing) Now, let's get the date. That was December the 6th, 1949?

A 1949, yes, sir.

Q And it was contained on what page?

A On Page 146 of the '52 convention proceedings.

Q All right.

A Among other things it said, after describing the contract:

"Coal companies signatory to the agreement are relieved forthwith of the current 3-day work week limitation."

That was on the 6th of December.

Q Now, did George Love make a statement in December of that year?

[5397] A Yes.

Q Concerning this matter?

A Yes. On December the 28th, appearing on Page 96 and 97 of the '52 convention, the contract just described of December the 6th having been executed and as announced by the union, from day-to-day or week-to-week thereafter, having additional signatories executing such agreement, it necessarily came to the attention of the operators with whom we had been undertaking to negotiate a new agreement, and who were under this 3-day limitation of the collective bargaining tactic, that the union had devised and had invoked, and Love, on December the 28th, made this statement, among other things, issued at Pittsburgh, Pennsylvania:

"The attempts of John L. Lewis to coerce the coal operators into signing this infamous and illegal 'blank check' contract have been a complete and total failure.

"Only a few irresponsible 'gopher hole' producers have yielded to the union pressure and even these remain anonymous. The tonnage these few actually produce has been exaggerated many times over.

"We understand that the Southern Coal Producers' Association today filed charges before the National Labor Relations Board to prevent Lewis from continuing the 3-day work week in an effort to force operators to sign an illegal contract. We are in complete accord with this

[5398] action and our attorneys are preparing similar charges which will be filed at the earliest possible moment." And I might add they were filed, a series of five of them covering the whole United States, so far as I recall, and in every one of the coal bituminous districts.

Q And this resulted in the Penello injunction?

A Yes, sir, complaints were issued. The complaints were consolidated. The Board went for an injunction and it was obtained before Judge Keech in what we call the Penello injunction.

Q All right, sir. Now, did there come a time when a telegram was sent to the district presidents of the union by Mr. Lewis?

A Yes, sir.

Q What page do you find that on?

A That is to be found on Pages 147 and 148 of the '52 convention proceedings. It had to do with the intermediate agreement of December the 6th. The signatories of which were being lifted out of and relieved from the limitation of the 3-day work week and it read as follows:

"It is possible that certain coal companies in your district who had become signatories to the new Bituminous Wage Agreement will desire to work six days a week and pay the time and a half required by contract. This is officially to advise that the International Union
[5399] gives each district president authority to grant such permission to work where companies desire to do so and the men are willing."

That was on January the 11th, 1950.

Q Now, as a result of the so-called national emergency was there a board appointed by the president to investigate this emergency some time?

A Yes, sir, there was, the president appointed a board.

Q And what date was that? Do you have what date the Board of Inquiry was appointed?

A I don't have it in front of me, Mr. Combs, but I know that it was in the latter part of January of 1949.

Q I believe the reference to this is on Page 111 and 112?

A That's the final report of the Board.

Q Yes.

A Of Inquiry. That appears on Page 111 and Page 112.

THE COURT: January of '49 or '50?

THE WITNESS: Fifty.

MR. COMBS: Fifty.

A That board was appointed by Presidential directive and, as I think I can explain later on in reference to it, well, I can tell you, it was appointed actually on February the 6th by Executive Order No. 10106, [5400] was composed of David L. Cole as chairman, W. Willard Wertz, who is now the Secretary of Labor, and John T. Dunlop.

Q All right. Now, in connection with this report did they make reference to this intermediate agreement and the lifting of the 3-day work week?

A They did after the negotiations had ensued that they supervised and attended and no agreement being reached they made a final report to the President on February the 11th and that, of course, was a predicate for the President asking for the national emergency injunction and in that report, among other things, it states as follows, appearing on Page 111-112, pertaining to the intermediate agreement of December the 6th of 1949:

"On December 3, 1949, the United Mine Workers announced that a contract had been signed with a number of coal companies producing 2,000,000 tons, providing for increases in basic wage rates of 95 cents per day

and of 15 cents per ton in the contributions to the Welfare Fund. Since that date the United Mine Workers have reported periodically that additional companies have signed this agreement. It now states that a total of 1,860 companies with 41,000,000 tons annual production are under this contract."

That was, of course, the report of the committee on February the 11th and I, as I said, I believe on
[5401] yesterday, your Honor, pursuant to that report and the request for injunction by the Labor Board, Judge Keech, on February the 11th, 1950, issued two injunctions, one the Penello injunction restraining the union as against demanding these four items that were in controversy, and the national emergency injunction mandating the union and the named co-defendants, being all of the companies and associations who had signed the charges on which the Penello injunction was issued, mandating them within the limits of the Penello injunction to negotiate a new agreement. Collective negotiations, bargaining negotiations, ensued.

I attended them up until such time as we were cited for contempt and I had to return to court to defend it.

Collective bargaining negotiations continued and were renewed after our acquittal of contempt under the mandate of these two injunctions and under the scrutiny and surveillance of the United States District Court for the District of Columbia, of the National Labor Relations Board, of the National Emergency Board of Inquiry, and the President of the United States, and the spokesman for all of these companies, including Southern Tennessee Coal Producers' Association, participated in the negotiations of the contract under those conditions and under that compulsion and under that sort of situation negotiated the contract of 1950, and following the acquittal of the union of civil and criminal contempt about noon on
[5402] March the 2nd, 1950.

Negotiations, of course, immediately resumed quickly. I returned to them, except for such time as we had to divide our forces, as I told Mr. Combs a while ago, and some time during the night after midnight of March the 2nd, Saturday, we were acquitted on Saturday and some time after midnight of Saturday, March the 4th, an agreement was executed and it was signed, as I remember most vividly, about noon on Sunday, March 5, 1950, in the Statler Hotel, and that contract under those conditions for those reasons deleted the "able and willing" clause that had been in controversy. It amended the union shop clause that they had referred to as being illegal by adding to it the words "in the manner and to the extent permitted by law." It modified and restricted the memorial period, as I have already testified about. It expanded the welfare payment that had been complained about before being payable only to members of the union, it expanded that to provide a payment to others, including the words, "such other persons as may be properly included as beneficiaries thereunder."

Q What happened to the 3-day work week?

A It was eliminated, it was just forgotten because, as illustrated thereafter, as I believe I testified on yesterday, Mr. Combs, the National Labor Relations Board and the United States Government itself, the [5403] union having obeyed the injunction and the mandates of the Court and the '50 agreement having been achieved, the Board and Government moved to dismiss those two injunctions and they were dismissed.

The 3-day work week had served its purpose, your Honor, as a complete bargaining tactic. It had brought about the conclusion of the negotiations finally into the agreement of 1950 under the circumstances which I have described because it acted under that collective bargain-

ing tactic as a compulsory influence upon the operators to come to true bargaining negotiations with us and it was abandoned by the union, and to demonstrate the fact that it was abandoned upon the record a notice was sent to all the signatories of the intermediate agreement of December 6, 1949, that I have read to you originally executed on that date by that group, adhered to later by others, until it came to the magnitude as described in the report of Board of Inquiry. A telegram was sent to all of the signatories of the December 6th agreement, 1949, intermediate agreement on March 6, 1940, appearing on Pages 147 and 148 of the '52 convention proceedings, reading as follows:

"Notice sent to all signatories of the intermediate agreement, March 6, 1950:

"'You are advised that the National Bituminous Coal Wage Agreement of 1950, executed at Washington, [5404] D.C., March 5, 1950, will be substituted for the agreement which you have heretofore signed, and under which your property has been working. The National Bituminous Coal Wage Agreement carries certain wage rates and welfare payments in lesser amounts than the agreement of December 6, 1949, and when executed by your company with the proper representatives of the district in which you are operating will be effective as of the date, March 6, 1950.

"'Your company should make arrangements with your proper district representatives for the execution of this substitute agreement.

"'The officers of the various district organizations are ready to cooperate with you in the facilitation of this task.'

"(Signed) United Mine Workers of America, by Lewis, Kennedy and Owens," as the three International officers

and the 3-day work week went out of existence.

Q Now, Mr. Hopkins, from the time that these negotiations commenced in June of 1949 up to and including the negotiations of the contract in March of 1950, was there ever a demand on the part of the Mine Workers that a 3-day work week be incorporated in a successor contract as such?

A No, sir, it was purely a bargaining tactic, it was never suggested or asked as a contract clause and would not have been accepted had it been offered [5405] entirely a different purpose.

MR. COMBS: Now, if the Court please, we have a summary here of the history of mine seizures and National Emergency Boards and I wonder if counsel would read that into the record.

THE WITNESS: Be very brief, I will.

Q We have the list of mine seizures and National Emergency Board seizures.

A "Between 1943 and 1948, inclusive, the bituminous coal mines were seized by the Federal Government on five different occasions."

MR. ROWNTREE: I think we already have that in the record.

MR. COMBS: I think we do but I would like to have it in compact form, it's only about a paragraph long.

A The President, in each instance acting under his alleged constitutional powers and the War Labor Disputes Act (Smith-Connally), and in two instances, 1943 and 1946, Mr. Rowntree, the mines were operated for substantial periods of time. The five seizures were as follows:

May 1, 1943, extending to October 12, 1943.

Re-seized on November 1st of '43 and that operation continued until May 31, 1944, and it continued in the

Southern producing area until June 21, 1944.

During September and October, 1944, certain
[5406] coal mines involved in supervisory strikes were seized for short periods of time.

The next seizure came on April the 10th, 1945, and it lasted only until June 3, 1945.

The fifth one was of some duration and it resulted in the Krug-Lewis agreement and began on May 21, 1946, and continued until June 30, 1947.

Q Do you have a list of the national emergency injunctions that you have testified about here?

A Yes, sir. After the enactment of the Taft-Hartley and its effective date in August, 1947, there had been three seizures of all of the bituminous coal mines by the President of the United States acting under the national emergency sections, I believe it is Section 303, of the Taft-Hartley Act, and they are as follows, and in each instance the Boards of Inquiry were established:

The first was March the 23rd, 1948, by Executive Order No. 9939. The Board was composed of Judge Sherman Minton, who was then on the Circuit Court of Appeals for the Seventh Circuit, as chairman, Dr. George W. Taylor, of the University of Pennsylvania, the Wharton School of Commerce, and Mark Ethridge, of Louisville, Kentucky.

The second one was on June 19, 1949, by Executive Order No. 9970, composed of Mr. David L. Cole, of

New York, Washington, New Jersey, an attorney,
[5407] as chairman, Mr. E. Wight Bakke, I have forgotten which college he came from, perhaps Harvard or Yale, and Mr. Waldo E. Fisher, a professor, I believe, of Economics in the Wharton School of Commerce.

The third one came, as I believe I have stated, on February the 6th, 1950, by Executive Order No. 10106,

composed of Mr. David L. Cole, Chairman, Mr. W. Willard Wirtz, and Mr. John T. Dunlop, Mr. Dunlop being a professor of Economics at Harvard University, and in each instance the Board of Inquiry held hearings, they summonsed the parties before them, they observed and participated in certain bargaining sessions and made findings of fact and reports to the President as they were directed by the executive order.

Of course, in the case of 1950 the Board, after hearing the parties and observing their negotiation sessions, made its report on February the 11th, the same day the President instructed the Attorney General to move for an injunction, he did so move and Judge Keech issued the injunction, which, as I testified on yesterday, in that instance all the bituminous coal companies who had filed charges with the Labor Board upon which the Penello injunction had issued were named as co-defendants with the International Union and specifically mandated to and negotiated a contract in accordance with the instructions of it and the mandates of the Court in the Penello injunction, so again I say that under supervision and
[5408] with full knowledge on the part of the Court, the Attorney General, the Board, the President, the National Labor Relations Board, the agreement of 1950 was reached on the night of March the 4th, 1950, in accordance with the mandates of the Court. The items that were in controversy were settled as I have related.

Q Mr. Hopkins, do you have knowledge of the history of the Southern Coal Producers' Association?

A Yes, sir, I recall when they came into existence.

Q Would you give a brief outline of the history of the formation of this group and the occasion of their formation?

A Yes, sir. The Appalachian agreement of 1939

terminated on March 31, 1941. Those are the joint sessions about which we have previously discussed on yesterday, but the South and the North so-called met in joint session with the Mine Workers in New York at that time on the termination of that contract and during the course of the negotiations the Southern group differed so completely with the Northern group over the so-called wage differential and other things that they withdrew from the joint conference and on April the 11th, 1941, while negotiations were in progress, the conferees for the Southern operators, by letter addressed to the joint chairman of the negotiations, Mr. Van Horn, announced the formation
[5409] of a new group that they called "Southern Operators Wage Conference," and stated that it represented mines in West Virginia, Virginia, Kentucky and Tennessee, with Ebersole Gaines named as its first president.

You will find that reference to Page 50 and 52 of the 1942 convention proceedings.

Now, thereafter in later years the Southern Coal Producers' Association, not in later years but in later months, was incorporated under the laws of West Virginia and a charter was issued to it on the 17th of October, 1941, a copy of which I have here, I believe, Mr. Combs, if you want to use it.

It showed its principal office to be in Washington, D. C., and thereafter, however, by amendment on August 21, 1964, it amended its charter to change its principal office to Charleston, West Virginia.

Now, the first head of that organization after Mr. Ebersole Gaines first headed it up in the original instance was a Mr. Edward R. Burke of Nebraska, a former member of the United States Senate and an attorney by profession. He was named president of the Southern Coal

Producers' Association in 1942 and was later succeeded by Mr. Joe Moody, either in late 1945 or early 1946. Mr. Moody was succeeded by Mr. C. W. Davis in 1960 when Moody resigned and Davis, in turn, after resigning, was succeeded by Mr. Quin Morton, III, some time in late 1963.

[5410] Now, the Southern Coal Producers' Association, as I believe I have testified, participated in the 1943 proceedings as such leading to the Krug-Lewis agreement, participated in the '45 proceedings as such through Mr. Burke, they participated in the 1946 proceedings as an association leading to the Ickes-Lewis agreement, and I think I have related that in 1947 they participated in the agreement that was signed only in the individual capacities of the operators of the companies and the associations composing Southern Coal as such and the—

Q (Interposing) What about 1948?

A In 1948 the union gave termination notice to all parties signatory, that is, to the individual associations and operators rather than to Southern Coal as such because they had signed in that capacity in 1947 and that contract required notice to parties signatory. They were not given to Southern Coal as such.

The conference convened on May the 18th of '48. The Southern Coal Producers demanded participation in its own name. The union refused. Southern Coal filed charges with the Labor Board. The Labor Board issued a complaint. They, the Labor Board, went to court in that petition for an injunction to restrain the union from refusing to recognize the Southern Coal as such. The injunction issued. The union abated, as I believe I have testified before in the statement I made, and

[5411] filed with the District Court and thereafter the Southern Coal Producers' Association as such

was negotiated with in that particular year, 1948, and they executed that agreement.

Q As far as the legal situation is concerned, is the union still under that mandate to bargain with the Southern Coal Producers?

A Yes, sir.

Q What about the 1948 negotiations, did they participate?

A They participated certainly fully and signed the 1948 agreement and the captive mines participated also but, your Honor, you may recall, I think I testified on yesterday that the Southern Coal and the Northern group signed the contract as negotiated. The captives refused because, as they said as of that date, 1948, that the union shop clause was an illegal one, it was not complying, as they said, with Section 9 of the statute with reference to the union shop and refused to sign it and they went to the Labor Board, filed charges. The Board went to court, got an injunction and the union went in through your spokesman here, this witness, and filed a statement with the Court satisfactory to Judge Goldsboro to the effect that if the captives would sign the contract during the course of the litigation of the clause the contract could be executed, as a matter of fact, it
[5412] was executed in Judge Goldboro's chambers with myself and Harry Moses as spokesman for the captive mines present and the statement was then issued appearing on Page 147 of the 1948 proceedings showing that we stipulated the contract would remain in effect pending the final adjudication of the question of the legality of the union shop clause and, your Honor, just for clarity, it was that proceeding that then went to a hearing before a trial examiner and the Labor Board, and to the Circuit Court of Appeals, and was on petition

to the Supreme Court of the United States involving the legality of the union shop clause in the '48 agreement, cert was refused. Just about the time it came time for the Mine Workers in January or February of 1951 to comply with the restraints contained—with the requirements contained as a result of the Penello injunction emanating from the Leff opinion that was adopted by the Board, so the compliance then was had, as I think I articulated yesterday, or tried to, simultaneously with the requirements of the '48 Board findings in the captive steel case, with the compliance with the requirements of the Penello injunction as were enunciated in the Leff opinion, it was done simultaneously in the spring of 1951.

Q Now, Mr. Hopkins, has the Southern Coal Producers signed all of the national agreements subsequent to 1950 in their own name?

[5413] A Yes, sir, they have each time and during the time that we were under the compulsion of the two injunctions, Mr. Combs, when you asked about them signing, that was the time when they took it before Judge Keech.

Q Right.

A And were mandated to return and negotiate the contract.

Q Now, let me revert back just one minute to the 1958 contract, the "protective wage" clause in that contract, the proposals being made by the union. Were those proposals submitted to the Southern Coal Producers at about the same time as the negotiations were going on with the Bituminous Coal Operators Association?

A Yes, sir, they were two separate but parallel and concurrent negotiations in progress in 1958, one with the Southern Coal and one with BCOA and the "protective wage" clause certainly was presented to and

known to the Southern group because I had occasion to discuss it at their request with their legal representative before it was achieved.

Q Do you know about how long before the contract was executed, do you remember?

A Well, I can't say any precise date, it must have certainly—say beginning in mid-October, I know it took me some time to try to work out in my own mind the form and the verbage of the clause and it was dis-

[5414] cussed by me with their representative in, I know, late October and November and up to the time—

Q (Interposing) And a draft of the proposal of the PWC was given to the representatives of the Southern Coal Producers?

A Yes, sir. I believe I have asserted and read yesterday the letter of November the 25th, 1958, addressed by Mr. Kennedy to Ed Fox, the president of BCOA. To my knowledge I know that that draft was the proposal which later became—the draft of the PWC was certainly presented to the Southern Coal Producers' Association at the same time in addition to the paragraphs that we had been working on.

Q Now, Mr. Hopkins, in connection with the Bituminous Coal Operators Association, did the union have anything to do with the formation of that association, were they consulted or did they have anything to do with the formation of the Bituminous Coal Operators Association?

A Mr. Combs, not at all. To the contrary, I recall quite well, your Honor, that during the course of the negotiations at White Sulphur Springs along in June before the contract expired on June 30, 1949, there were various press stories carried forward. I remember one in which my good friend, Lou Stark of the New York

Times, apparently he was getting some wind of it from some of the operators to the effect that a tsar in the industry was going to be in the bituminous in-
[5415] dustry, was going to be selected by the operato and there was all sorts of speculation in reference to it in June of '49 to such an extent that I recall the union felt it proper in order that there be no misunderstanding on the part of our people in the field on June the 16th, 1949, of course, obviously along prior to the 1950 agreement, there was a wire, a telegram, sent to all district presidents by Mr. Lewis as president of the International Union reporting on the status of the current negotiations and in that he stated as follows, appearing on Page 46 of the 1952 convention proceedings

"Newspaper reports concerning appointment of one man; to-wit, Harry M. Moses, to represent coal operators in future is entirely a coal operator's problem. United Mine Workers have not been participating in such discussions and have no commitment of any character outstanding."

Q That is found on Page 46 of the proceedings of the 1952 convention, which is Exhibit No. 133?

A Yes, sir.

Q Now, I believe the Bituminous Coal Operators Association was formed some time after the 1950 agreement, is that correct?

A Yes, sir, my recollection is that it was some time in the late summer or early fall of 1950 that it was announced from Pittsburgh, I believe, as having
[5416] been formed at that time and Mr. Moses having been selected as its present president.

Q And the union bargaining with BCOA has been the result of this representation that they represented the companies involved?

A Yes, sir.

Q And that alone?

A Yes, sir.

MR. COMBS: Now, I would like to address a remark to counsel. I think that counsel has stated that he is not making this union shop clause an issue in this case.

Now, we have a history of that clause that the witness can testify to and I believe that you, the other day that you said you were not going to go into that particular provision of the contract. If you are, why, I will take this witness through that.

MR. ROWNTREE: No, only to the extent of inquiring whether there has been any legal contest of the form of the clause by any member of the Bituminous Coal Operators Association, the Southern Coal Producers' Association or Illinois Coal Producers' Association or any of those associations of that clause since 1950.

MR. COMBS: All right. Now, you can ask the witness that, of course, on cross-examination.

MR. ROWNTREE: Yes.

[5417] MR. COMBS: In connection with that then I will rest my interrogation of the witness on a statement, if the Court will permit me, that this clause in the contract that was inserted in 1952 has been upheld.

THE WITNESS: 1950, Mr. Combs.

MR. COMBS: 1950 has been upheld on at least three different occasions, the specific clause by different Courts of Appeals and I would like to cite those cases for the record in reference to that. This clause was involved and its legality was upheld in the case of Lewis vs. Fentress Coal and Coke Company, United States District Court for the Middle District of Tennessee, Judge Miller, in 1958. It is found in 160 Fed. Supp. 221. It was affirmed at 264 Fed. (2d) 134, Sixth Circuit,

in 1959.

We have the case of Lewis vs. Quality Coal Corporation, 270 Fed. (2d) 140, the Seventh Circuit, 1959, cert. denied 361 U.S. 929.

Also the case of Perry Coal Company against NLRB, 284 Fed. (2) 910. This is a Seventh Circuit, 1959. Certiorari was denied in 1961, 366 U.S. 949.

You may cross-examine.

MR. ROWNTREE: We would like a recess, your Honor.

THE COURT: All right. Take a 10-minute recess.

(Thereupon, a recess was had.)

[5418] CROSS-EXAMINATION

BY MR. ROWNTREE:

Q Mr. Hopkins, under this negotiation of the Ickes-Lewis agreement, I believe November 3, 1943, did you testify that Mr. Lewis obtained his authority to negotiate for the United Mine Workers from the International Policy Committee of the union?

A I don't recall my words but that was certainly true because each national convention preceding the time of the negotiation of the new agreement selects a policy committee, authorized the local unions and directs them to select men from the mines to constitute the policy committee that is empowered to pass upon all contracts that are negotiated and when they are negotiated through the representatives chosen by the members of the policy committee they are referred to the policy committee for consideration and approval before they become effective.

Q That is true with respect to all negotiations of contracts with the United Mine Workers?

A Yes, all national agreements that I know of the policy committee is aware of them and ratifies them.

Q Now, at the conclusion of the 1949 and '50 bargaining sessions the government injunction had served its purpose since the national emergency had been relieved after the signing of the agreement?

A There were two injunctions there, as I
[5419] recall.

Q Yes, sir. I am talking about the government injunction.

A Yes, sir. And they moved, as I related, some several months later on motion of the Attorney General reciting what had occurred in the negotiations of the agreement and his presentation to the Circuit Court of Appeals, not to the Circuit—the contempt proceedings to the Circuit Court of Appeals, they moved the Court for the dissolution of the injunction and it was so ordered.

Q Because the basis for the injunction, the national emergency, had been relieved?

A Yes, sir, the contract having been negotiated under the conditions and on the terms and under the mandate of the Penello injunction, as I have related.

Q Well, the other injunction was the Penello injunction?

A But it was connected with it because, Mr. Rowntree——

Q (Interposing) I realize there was a connection there but the other injunction was the Penello injunction, which was issued on the petitions of coal operators?

A That is at the behest of the General Counsel and the National Labor Relations Board on consolidated complaints issued upon these hundred-odd charges
[5420] filed by the coal operators, yes, sir.

Q And substantially the petitioners there were the members of the Southern operators, the Northern operators, and captive operators?

A They were nationwide, there were different

series of charges filed beginning on the 28th of December 1949, running up almost to the time of the issuance of the complaints by the General Counsel.

Q Yes, sir.

A And they cover almost the entire bituminous coal jurisdiction.

Q And those petitions and the injunction were founded upon technical language in the contract pertaining to these various things, like the "able and willing" clause, memorial periods, the union shop language and the Welfare Fund language?

A Yes, sir, the technical charges alleged violations of the different 8(e) sections of the Taft-Hartley, were grounded in the operators' allegations.

Q Yes, sir.

A That there was unfair labor practice in the manner in which the union was undertaking to negotiate on those clauses.

Q And would you not say that that was a sort of side show to the basic issues in the bargaining [5421] sessions?

A I do not know what you mean by "side show," Mr. Rowntree.

Q Is it not true, as the Presidential Fact-Finding Board found at Page 114 of the 1952 convention minutes, that the disputes over this technical was really underlain by more basic economic questions?

A I recall, I think, the language that you avert to in the Board of Inquiry's report to the President on February the 11th and they did say, in substance, as I remember, that the basic issue was a dollar issue, that the operators were refusing to make any grants of increased wages as demanded by the union and the other matters were involved but they didn't make statements

to that effect.

Q And these other issues reached to the hard economic facts with respect to the position of the operators and their ability to pay these increases?

A Well, of course, the 3-day work week was a bargaining, collective bargaining tactic, as I have testified, also reached into the economic field and became an economic issue with the operators, purposely so from the standpoint of the union.

Q Yes, sir. Now, after the signing of the contract, is it not true that the operators, particularly those represented by Mr. Moses and Mr. Love, worked with the union to try to obtain a dissolution of the Penello injunction?

[5422] A No, sir. I don't think they tried to work with the union. It is true that counsel, Mr. William Foster, I believe, as counsel for A. C. Frick and maybe other companies, and one of the persons that had participated as a legal representative with the operators in the negotiation of the agreement, I think he was present in the negotiations on the Saturday night of March the 4th that I referred to, it is true that he wrote Mr. Robert Denham, the then General Counsel of the National Labor Relations Board, a letter reciting the fact that the contract had been executed and that the points involved under the mandate of the injunction had been settled, and so stated to Mr. Denham, and upon that he didn't ask any dismissal but upon that I certainly did and my associates did in urging Denham that the matter had become moot because it had the imprimatur of all these federal agencies, but he took the position that it should continue under the National Labor Relations Act and, therefore, we went to hearing in August of 1950 on these charges before Arthur M. Leff, the Trial Examiner, and after

almost two weeks of hearings he finally came out with an intermediate report in December, 1950, in which he exonerated the union of the unfair labor practice charges as averred except for the one involved in the——

Q (Interposing) I think you have gone into that, but I was asking in respect to the working to-
[5423] gether of these operators and the union to get the charges with respect to the Penello injunction.

A No, sir, no more than I have related. I am aware of the Foster letter, I certainly referred to it affirmatively with Mr. Denham.

MR. ROWNTREE: We would like to file as the next exhibit the United Mine Workers Journal, Page 5, September 1, 1950.

MR. COMBS: For what purpose is counsel filing this exhibit, may I inquire?

MR. ROWNTREE: I am filing it to show the change in the attitude and the working relationship that occurs as of this time between the United Mine Workers and the operator groups with which they had previously been contending.

MR. COMBS: I object to it. That is affirmative direct evidence, it has nothing to do with this witness' testimony and I object to the filing of that exhibit at this time.

MR. ROWNTREE: May I point out to counsel that this witness has covered a wide gamut and we are now showing the change in the attitude and relationships between these previously contending parties.

MR. COMBS: I think that is very much of a generality the statement of counsel there, I think if counsel wants to ask the witness questions concerning this
[5424] matter with reference to his testimony it is entirely proper and I have no objection.

I certainly object to the introduction of exhibits here that should have been put in on affirmative evidence, if that's what counsel has, that's my objection.

MR. ROWNTREE: Well, this witness did not testify while we were putting on our proof in chief and you have been reading copiously from all manners of documents.

MR. COMBS: With reference to everything that the witness was testifying to and in connection with stipulations that have been signed by you.

MR. ROWNTREE: This certainly has to do and has reference to matters which he has gone into in the utmost detail.

THE COURT: Well.

MR. COMBS: If you want to ask him about it, I have no objection but I do have objection to you filing exhibits now.

THE COURT: Gentlemen, let's do this so we can move along: I understand your respective positions. If it is your purpose to use this in cross-examination you, of course, may proceed. If it is your purpose merely to offer it as proof I would suggest that we proceed in the usual manner and if it is appropriate rebuttal proof you may offer it in rebuttal, but at this
[5425] time I don't believe it would be proper to interrupt the proceedings in the cross-examination to offer what purports to be rebuttal proof.

MR. ROWNTREE: Let me show you—

THE COURT: (Interposing) Exhibit No. 444 is the exhibit.

(The article referred to above was marked P444 and received in evidence.)

Q Let me show you that United Mine Worker Journal page and ask you if you recall that those events took

place shortly after the signing of the National Bituminous Coal Wage Agreement of 1950?

A Just looking at it I see this refers to—Mr. Rowntree, this appears to be a reproduction of the issue of the United Mine Workers Journal of September 1, 1950, which, of course, is about six months after the contract.

It refers, apparently, to proceedings that had recently occurred before the Hearing Officer, Mr. Leff, on the trial of the charges in August or July just preceding, I assume, this issue of 1950.

It refers to me and undertakes to suggest certain things that I argued in the public interest, as it states, and stabilization relations in the coal industry before the examiner in reference to the hearings that he was about to undertake and I recall that I did renew before the examiner for the record the fact that the con-
[5426] tract had been achieved and, therefore, the issues were moot.

Q Do you recall that Mr. Moses did the same thing and that he did it with vigor, as is stated there?

A Well, let me see what it says here about Mr. Moses. I don't know anything about "vigor."

Q May I point out the paragraph to the witness?

A Yes, sir, if you will, I can't read it all. I see Moses' name mentioned here. Oh, yes, I guess this is what you refer to. This article quotes, states that Mr. Moses took the witness stand in those proceedings, that is true, and he related the background of the negotiations in which he had participated, as I have related them here, beginning back in the summer of 1949, and he related the execution of the contract and, as I recall, I think he did state, without undertaking to quote him directly, that the contract, having been achieved, that the problems and issues had been resolved.

Q All right, sir.

A Appeared there in support, of course, of the charges that he had filed and he didn't recede from those. He very vigorously undertook to support the charge that it was an unfair labor practice and that we were guilty. He was appearing as a hostile and an adverse witness and not as a friendly witness.

Q Well, I will ask you if this statement is
[5427] true, "Supporting the UMWA argument, Harry M. Moses, President of H. C. Frick Coal and Coke Company, who spoke for the steel captive mine interests in the negotiations of 1949-50, took the witness stand and told how he and representatives of all other operator groups had called on Denham personally and presented him with signed letters, as well as oral argument, stating their reasons for asking that the case be ended without further quibbling. Moses said that he had presented 'with a good deal of vigor' the dismissal request."

Is that statement true, to the best of your knowledge?

A To the best of my knowledge Mr. Moses on the witness stand did related the fact that the companies, he among them, felt that the contract problem had been resolved under the circumstances I have related and suggested that the matters were moot and the hearing should not ensue, but Denham differed with him, he differed with us, and Moses took the stand in the hearings as a very hostile witness to us and undertook to support his viewpoint the charges that he had caused to be filed. He didn't recede from his position one iota.

Q Now, the BCOA was organized after the signing of the National Bituminous Coal Wage Agreement of 1950, is that true?

A The contract was signed March the 5th
[5428] and the BCOA was announced, as I recall, some

time in late August or September of the same year.

Q And at that same period of time the International Union organized the International Organizing Committee?

A What now?

Q Organized the International Organizing Committee

A Mr. Rowntree, I neither affirm nor deny because I don't recall the dates, but I do know always that the Mine Workers have undertaken to organize in bituminous coal fields traditionally and I do know from time to time there have been renewed efforts, both before and after 1950 and during 1950.

If you are referring to some specific group that may have been set up and the records support it I don't deny it, I have no factual precise recollection.

Q And is it not true that the purpose of that group, the International Organizing Committee, was to press an intensive drive in the non-union sections of the country to organize the mines in those sections?

MR. COMBS: Now, I object to the continued questioning on this. I did not bring this out in direct testimony. The witness has testified that he has no knowledge of the particular part and I think that a continuation of this questioning is objectionable. I didn't bring this out from this witness. He didn't mention that.

[5429] THE COURT: Well, overrule the objection.

A I can only say assuming the accuracy of your statement that such a committee was set up at that time. I can only assume, and would say that continuation of traditional policy that I first knew of years before when I came there and it had been a continuous policy, it was nothing new and novel.

Q Now, is it true that the 1951 contract was negotiated between Mr. Moses and Mr. Lewis as a one-man or a two-man bargaining team?

A I wouldn't say that precisely, Mr. Rowntree. My recollections are that negotiations went on between them under the authority that each of them as principals had from constitutions and members but there was a constant referral during the course of those negotiations by Moses to his constituent members and I think I recall correctly on one occasion I was asked about some phases of it and there was a referral back for guidance or acquiescence or differences or consideration of proposals as they ensued between the two men representing the two groups and I think also that there was some proposals made to the Southern Coal Producers, not in the formal sense of an open bargaining session but in the sense that they were both fully aware of the proceedings.

Q Now, I believe you testified that the 3-day work week and the stabilizing period of work were

[5430] forgotten after the end of the 1949-50 sessions?

A I said that the 3-day work week had served its purpose as a collective bargaining tactic that obviously produced results from the union's viewpoint and achieved, at least in part, the purpose it had in mind and it was under the mandate of the Court no longer contained in the contract that was negotiated but was eliminated by the union in compliance with that mandate and obviously it was thereafter abandoned as a bargaining tactic, having served its purpose.

Q Now, in the 1952 amendment to the contract I believe you testified that the Southern Operators were bargaining at the same time as the Bituminous Coal Operators Association?

A I think that is accurate. I'd have to turn to my notes, but I think that is correct, Mr. Rowntree.

Q Is it not true that the Bituminous Coal Operators Association negotiated the contract with the United Mine Workers and it was signed by that group and that unit

before the Southern Coal Producers agreed to the contract

A That may be, I am not quite positive. It may be that it was signed by the BCOA before the Southern group signed it, your Honor, but that is not to say that the Southern group was not informed of the negotiations that were in progress. I am quite confident that they were, although it was quite usual, or it wasn't
[5431] unusual at times for the Southern Coal Producers Association to say that, "We had to go back and get authority of some of our members."

I have heard Mr. Moody do it several times to execute the contract thus negotiated and there was a time lag and they frequently signed at a date subsequent.

Q You agree that it was subsequent?

A I think that is correct.

Q Yes, sir.

A Although it was a very short time thereafter, but I might put it this way, as I recall it, Mr. Rowntree, that the Southern Coal Producers' Association perhaps was somewhat like the Mine Workers in the sense that the representatives of that association authorized to bargain did bargain and when they reached what they believed was a contract that was acceptable they had to carry it back to their constituent members, not only to explain but to obtain the authorization and approval of their members before it was actually executed.

Q Now, I believe you testified that there were work stoppages incident to that amendment, the amendment of 1952?

A Yes, sir, as I recall there were.

Q Is it not true that these work stoppages occurred after the signing of the contract by the Bituminous Coal Operators' Association and during the period
[5432] that the wage stabilization board was balking on

approval?

A It was certainly going on, I am not prepared to say that they started absolutely prior to the approval or prior to the execution of the contract, they certainly occurred in October and November and December of 1950.

Q Are you prepared to state that they were going on while the Bituminous Coal Operators' Association was bargaining?

A No, sir, I am not saying that.

Q All right, sir.

A I have no direct recollection on it but I don't say that.

Q Now, after the 1950 contract is it not true that the stabilization question, the stabilization of production and prices question and the overproduction problem was taken up by the operators and presented to the union from time to time to seek the union's help in solving that problem, the problem of overproduction?

A Are you talking about the negotiation and the approval of the '52 agreement?

Q And any time after the 1950 contract.

A I don't know that I quite follow the import of your question. I can respond to it the best I can this way, the 1952 contract executed, as it was, and as I have previously described—

[5433] Q (Interposing) I am not talking specifically—

A (Interposing) Approval was sought of that contract by the Northern group under its obligation of the wage stabilization but the Southern Coal Producers' Association as such and in a separate application, bearing Case No. 20N20887, the approval of the contract was sought by the Southern Tennessee Coal Producers' Association.

Q Well, what I am asking you is this, do you recall that the operators, the coal mine operators of various groups, would come to the union and seek help on a stabilization plan for the industry?

A No, sir, I have no knowledge of that. I don't know just what you mean by "stabilization." I do know that stabilization in the sense of continuity of production was highly desired by both parties all of the time, even during the worse of the stoppages, but if you are talking about stabilization in some economic sense or some idea—

Q (Interposing) Yes, sir, that's what I am.

A Some collusive bargaining arrangement to stabilize, I have no such knowledge and I don't think any such thing occurred.

Q I will ask you this: Do you recall that during the bargaining of the 1952 contract that Mr. Moses of BCOA was having difficulty in getting approval of some of the operators in his group, the BCOA?

[5434] A You mean getting approval to the contract?

Q Yes, sir.

A Well, he had approval obviously when he filed application or joined in the application filed by BCOA asking approval from the wage stabilization agency because Moses, himself, attended the conference at the White House under the Presidential situation that was existing after the wage stabilization board had disapproved it in part, that they take an appeal to the stabilization director, Mr. Putnam, and he appeared there in person. I was present, Mr. Lewis appeared and testified and briefs were filed, both by him and by me.

Q I am talking about the period before the signing of the contract. Do you not recall that he was having trouble with the Illinois Coal Operators Association

members?

A Why, I do know in a general way, Mr. Rowntree, that the Illinois Coal Operators Association became, as I understand, members of the BCOA some time in the spring of '52 and I recall further that the individual members of the Illinois Association withdrew their membership from the Illinois Association.

Q After the signing?

A Because of their dissatisfaction with the contract that was being negotiated by BCOA and they executed separate contracts for them and then later on

[5435] BCOA accepted the resignation of the Illinois Association as such and it left, but BCOA did not negotiate a contract for those people for that reason. I assumed those who may have previously testified before me would have more detailed knowledge on that than I would have.

Q Do you not recall that the land-lease clause that was added in 1952, that this clause extended to the contract applicability to the lands, all of the lands of the subsidiaries and affiliated corporations of the companies of the signatory operators?

A Why, Mr. Rowntree, of course, the language of the clause speaks for itself, but I think, as I testified, the union had found that its previous leasing was not being effective.

Q I just asked you if that language was not added in 1952?

A It was added, I drafted it.

Q All right, sir. Now, do you recall that the Illinois operators had among their members companies that had mines that were represented by the Progressive Mine Workers?

A In what year now?

Q 1952.

A I have no precise knowledge, but I think that essentially so. They were a few Progressive

[5436] Mines under Progressive contract in that per and I think one or more may have been in Illi so what the Illinois situation was I have no direct know edge on that, sir.

MR. COMBS: I don't understand counsel's questio To clarify, was your question whether or not that the Illinois Coal Operators' Association had members who had contracts with the Progressive Miners?

MR. ROWNTREE: Who had mines wherein the rep sentation was by the Progressive Mine Workers.

MR. COMBS: Well, there's no proof in this record of that. The testimony is they had two different asso- ciations down there.

MR. ROWNTREE: Well, Mr. Beebe, I think, point it out in his testimony.

MR. COMBS: Yes, but it was a separate associatio I want the record to be clear and I am sure counsel doe that the Illinois Coal Operators' Association that Mr. Beebe testified to only represented the employers who were signatories to the Mine Workers and not the Pro- gressives.

MR. ROWNTREE: But some of these employers hac mines represented both by the UMW and by the Progres Mine Workers.

MR. COMBS: I see what you mean by that. Was that the only point that you are talking about?

THE WITNESS: I have no knowledge of that

[5437] so my answer is I have only knowledge—I thou you meant in a geographical sense—I have kno edge there may have been some mines in the State of Illinois not necessarily within the association that may

have been under Progressive contract.

MR. COMBS: The point I am making that was not in '52, there is no evidence on that.

Q Well, do you recall that some of these companies in that category had considerable difficulty later on in resolving the land-lease clause with the mines that they had wherein Progressive Mine Workers were the representatives?

A I have no—

MR. COMBS: (Interposing) If the Court please, I object to that question. There is no evidence of that here that the Illinois operators had difficulties on the land-lease clause. There is no evidence in this record here and counsel is asking this witness a question with the presumption or an assumption that there was such difficulty.

MR. ROWNTREE: Well, we have in the record on our proof in chief the difficulties that Peabody was having.

THE COURT: My recollection is that Mr. Beebe testified that some of the operators, including Peabody, were dissatisfied and that there was one of the clauses over which they were dissatisfied because they had mines operated by miners who were not members of the UMW. Is that not in the record?

MR. ROWNTREE: I think, your Honor, to [5438] be as clear as possible, I think that Mr. Beebe's testimony at that point related to the 1964 amendment.

MR. COMBS: That is correct, and that is my recollection, I think that is right.

MR. ROWNTREE: We do have proof in chief coming from the witnesses representing the officers of Peabody Coal Company and the witnesses coming from Progressive Mine Workers of the difficulties out there with respect

to the application of the land-lease clause in the Illinois field.

MR. COMBS: You do and, of course, if you want to ask the witness about this, but I don't think it should be confused in 1952 with the Illinois Coal Operators' Association because that didn't occur then and that is not the evidence.

Q Well, it was in 1952, was it not?

A Not to my knowledge.

Q That the Illinois Coal Operators withdrew from the BCOA?

A Yes, sir, individually they withdrew, as I understood the procedure, the individual operators withdrew from the Illinois Association, the operators as such executed the agreement with the Mine Workers and thereafter the association, Illinois Association as a member of BCOA in the association sense was released in [5439] December or thereabouts.

Q And thereafter Illinois Coal Operators' Association signed the contract itself rather than having it signed by BCOA?

A You mean in later years?

Q Yes, sir.

A Not the year of '52.

Q That is correct.

A Well, in later years I think that is true.

Q Now, while this confusion was going on about the 1952 amendment before the signing, is it not true that some glare of publicity came upon this particular bargaining session and that the newspapers started talking about the contract?

A Do you mean after it was proclaimed or before it was proclaimed or when?

Q Before it was signed, really.

A I have no recollection of newspaper publicity about it except always inherent in the terminal date or the approaching date of termination of all national contracts there had been newspaper speculations as to what would occur or what new contract would be reached. If you refer to some specific publicity prior to the execution of the agreement, I don't recall it, Mr. Rowntree.

Q Do you not recall that there was a revival in the press of the old stabilization and production con-

[5440] trol plan idea at that period of time?

MR. COMBS: What period of time?

MR. ROWNTREE: This is during the 1952 negotiations of the 1952 contract.

A Well, Mr. Rowntree, I have no recollection of what any newspaper man, a columnist or a reporter, might have written speculatively as to what he thought, might think was going on in the coal industry in reference to stabilization by the operators or otherwise or what he may have written in reference to the stabilization factor that was inherent in the government agencies that were then in control of those things, I have no knowledge of just what you refer to.

Q I would like to ask you about this language, and this is on Page 41 and 42 of the 1956 convention minutes.

A Fifty-six convention?

Q Yes, sir, being Exhibit 134, coming from a press release of President Lewis following the national policy committee meeting of September 15, 1952, and quoting—

MR. COMBS: (Interposing) What page, please?

MR. ROWNTREE: This is on Page 41, the third from the bottom paragraph.

Q "On last Monday, September 8th, Mr. Moses and I, representing the Mine Workers, reached an accord

and a meeting of minds on a new contract which we would recommend to our respective principals. Mr.
[5441] Moses reported to his principals at a meeting in Pittsburgh on Wednesday, September 10, recommending the settlement. Mr. Moses' principals rejected the proposed settlement and the recommendations of Mr. Moses and myself and have compelled Mr. Moses to adopt an attitude of desiring to negotiate an agreement in lieu thereof.

"All of which is most disturbing, most unstabilizing, and is distinctly unfortunate.

"In the later conversations with Mr. Moses, ensuing since he returned to Washington from Pittsburgh on last Thursday, no progress has been made in reaching an agreement. It is the position of the United Mine Workers of America that the agreement to be made must be the agreement between Mr. Moses and myself, or the equivalent thereof. On that question we assume that the operators are counselling among themselves. We have had no further word from Mr. Moses or any of his associates since last Friday."

Q Do you not recall the language at the end of that statement I read that he was saying that there was not time enough to put it in this contract but the industry should consider it in the future when there was not need for haste?

A Well, the wording speaks for itself and what you refer to, I think, is that this says that these are the facts about the stabilization plan, there's much merit
[5442] to the thought that eventually the coal industry will have to work out a stabilization plan of some kind, perhaps conforming in general in purpose and structure to the stabilization plan that is now in effect and has been in effect in the anthracite industry that was

by virtue of legislation and which has proven to be a boon to the industry, however, it is not probable, even possible, in my mind, that such a plan can be worked out in time to be utilized in the agreement now under discussion.

That was obviously, they couldn't have had time then to even set up a study committee. Study committees have been recommended from time to time in many industries looking forward to legislation and conceivably the time might have come in the bituminous industry when the parties might agree to try to ask for legislation, such as in anthracite, but I have no reason to believe in my mind that he was talking about any clause that would lead to stabilization in the contract as such and I had no —I might say that in my participation in the '52 negotiations, particularly as had to do with the application of coal contracts section, there was no discussion about stabilization.

Q Well, is it not true, as Mr. Lewis there is talking about collective bargaining agreements and not legislation?

A I think he might be talking about collective
[5443] bargaining in the sense that they might conceivably somewhere down the line undertake jointly to try to ask for legislation, just as they had in the anthracite, but I am quite positive in my own mind he is not anticipating any contract clauses.

Q Now, Mr. Hopkins, this stabilization talk in this period of time is coming from the operators and not from the—immediately from the UMW, isn't that right?

A The signatures speak for itself, I think. I can't say what all the operators were saying or not saying, Mr. Rowntree.

Q Now, this is the contract where the "land-lease" clause did come in, is that not true?

A Yes, sir, in 1952.

Q And is it not true that this language was merely a formalizing of the understanding that already existed between Mr. Moses and Mr. Lewis or between BCOA and the UMW?

A No, sir. I participated there and I heard the arguments back and forth. There was no preconceived agreement of any kind on it.

Q I will ask you about this language here at the bottom of Page 45 and the top of Page 46 of the 1956 convention minutes under the heading "Remarks made today at the formal signing of the 1952 Wage Agreement."

"Harry M. Moses, President, BCOA—this contract provides for an increase of $1.90 per day for
[5444] all our employees covered by the agreement and an additional contribution of 10 cents per ton to the United Mine Workers of America Welfare and Retirement Fund. The agreement was reached by the normal processes of collective bargaining traditionally practiced in the industry. The other changes in the contract amount to formalizing present practices.

"John L. Lewis, President, UMW: I concur in the statement made by Mr. Moses and wish to say that I am highly gratified that we have been able to arrive at this conclusion without loss to the industry or the public interests."

Now, the other language, the other part of the contract not specifically referred to would include this "land-lease" language, would it not, which was an important part of that contract?

A Trying to be responsive to your question, Mr. Rowntree, the language that you have just quoted from Mr. Moses and Mr. Lewis, they no doubt spoke those words but as to my knowledge they are talking about a

prior leasing clause that had been in that contract from 1943 up to that time by first suggestions by governmental authorities under the directive of the War Labor Board itself and that wording was carried forward into this 1952 agreement, the additional words making it applicable to coal lands held by subsidiaries and affiliates by language that I contrived in order to meet as the union thought the evasiveness by the operators under the preceding clause, but the words speak for themselves as the two gentlemen spoke it.

[5445]

Q Of course, the language carried over from the '41 on up through '51?

A It is included in the '52.

Q That language had to do with the subterfuge. But is it not true that the language inserted in 1952 had to do with the expansion of the agreement, the applicability of the agreement to all of the coal lands of all of the affiliates, all of the subsidiaries of the signatory companies?

A In the manner and under the terms as provided for because I might point out to you, Mr. Rowntree, that for a number of years the contract had also had this wording in it that had, we believed had been invaded by the operators, been there ever since 1945. I think I contrived the words in the witnessing section of the contract when it refers to the fact that the contract is being executed by the parties, by the operators on their part and by the union on their part, covering all of the bituminous coal mines owned or operated by said first parties. That had been continuously, as the union believed, evaded, in addition to the leasing clause that had been suggested by the government in the original instance and they being to no avail and chiseling continued, as the union believed, led to the negotiations of the additional coverage.

[5446]

Q And this was just a formalizing of the

understanding that really governed these parties?

A No, sir, it didn't formalize any understanding, it was an attempt on the part of the union to bring the operators to heel, to make them obey what we believed to be the mandates of and the requirements of the contract.

Q That's what I am saying. That's what I am saying, that this was really the understanding between Mr. Moses and Mr. Lewis as to the meaning of this language and the previously existing contracts.

A Well, I don't think there was any understanding between Mr. Moses and Mr. Lewis as to the meaning of the preceding contract. The contract spoke for itself and from the union viewpoint it was not being carried out by the operators, so the additional clauses were inserted in 1952, so if you are speaking of any express arrangement or agreement between Moses and Lewis before the contract clause was agreed upon I would have to say no.

Q Wasn't the language put in there to spell out more definitely what they meant?

A Yes, sir, but I thought you was talking about in terms of a pre-arranged meeting of the minds or collusion agreement between the operator and the union before the contract clause was achieved, that isn't so.

[5447] Q Now, there was no more language added between the 1955 and 1956 contracts along this line of "land-lease" or "protective wage" or anything like that?

A No, sir, I think not.

Q Is it not true that those two years were upswing years in the industry and that they were years of big production?

A Now, Mr. Rowntree, you asked me something that is beyond my kin as a lawyer. I don't know anything

about the economics of the industry in reference to those things, they may or may not have been, I have no judgment on that.

Q And then came 1958, which was a very bad year in the industry, wasn't it?

A No, sir. I can't again express an opinion on that. The economics, whatever they were, were there and were beyond my field and I had no part in that.

Q The statistics would speak for themselves?

A They would, sir, whatever they may be.

Q Now, is it not true that this time the negotiations were maintained in absolute secrecy, the negotiations between Bituminous Coal Operators' Association and the United Mine Workers?

A No, sir.

Q Is it not true that the press of the country, magazines and newspapers, were trying hard to obtain

[5448] information as to what was going on in those proceedings without success?

MR. COMBS: What period of time are you talking about?

MR. ROWNTREE: This is at the 1958 negotiations.

A Why, Mr. Rowntree, I assume that was so in every contract that has ever been negotiated. The press speculates before the parties meet, they speculate during the times they meet and they analyze afterwards on the contract that is achieved and promulgated. If you say in absolute secrecy, that is not so. Any negotiations were ensuing with the Southern Coal Producers' Association parallel and coextensive with the time that it was in negotiations with BCOA.

Q For the purposes of cross-examination only I want to ask you about this language contained in the October 4, 1958, issue of Business Week, at Page 97, quoting,

"At mid-week there were continuing reports that the coal industry and United Mine Workers might be readying a new wage contract but no one knew for sure because the coal industry conducts labor negotiations in secrecy and mystery in an era when most bargaining is carried on with all of the fanfare of an industrial circus. Mystery bargaining is now standard operating procedure in the coal industry. It is a system designed especially for the industry, part of a complete turn-around in bargaining outlook. Everything about coal negotiations
[5449] lends itself to the air of mystery.

"The two men who do the bargaining, Lewis and Fox, also carry on the day-by-day policing of the agreement."

Is this language a true description of the kind of bargaining that was going on?

A No, sir, it is not for this reason, among others, the public, of course, as such may not have known what was going on between the parties but the coal industry certainly knew it and the representatives of the coal industry were bargaining with the members of the United Mine Workers and such statements as that by the author of that article may have been or are his own conclusions and I repeat to you that the public maybe didn't know, as they used to know in a general way when there was a big town hall meeting of hundreds gathered with days of debate back in the '40s and the public didn't know it then when he undertakes to say that negotiations are in secret he characterizes that in his own way, but I tell you that the industry knew about it because negotiations were being carried forward with the Southern Coal Producers simultaneously but no press statements were being made.

Q In negotiations that were going on there was an exchange of information between the United Mine Workers

and the BCOA, Southern Coal Producers and the Illinois Coal Operators' Association?

[5450] A Illinois Coal Operators' Association were made aware of it, I am quite sure, through Mr. Moody and others who were actively in negotiation in Washington.

Q Did these three groups work together in formulating the language of the protective wage clause?

A No, sir. I happened to be the one that unfortunately was charged with the duty of trying to work that out.

Q Is it not true that they were exchanging information between each other before the contract was signed and is it not true that they worked together in implementing the collective, the "protective wage" clause structure after the contract was signed?

A No, sir, I can't answer that affirmatively because I know from my viewpoint that I was having exceedingly extended difficulties in discussing the clause with the legal representatives of the Southern Coal and of BCOA and you say that they were exchanging views between each other, I have no knowledge of that other than what may have been testified here by other witnesses.

Q That is with respect to the period before the signing of the contract?

A During the negotiations of it.

Q Now, after that it is clear that they were working together to implement the structure of the contract with respect to the protective wage clause?

[5451] A Now, Mr. Rowntree, if you mean by that that they were working together in some sort of conspiratorial off the record—

Q (Interposing) That's not my question.

A That's not true but—

Q (Interposing) That's not my question.

A I do say, sir, directly to your question that the PWC required and provided for the creation of a joint industry contract committee to be composed of six members and the operators under the mandate of that contract did select three of their members to sit upon that committee.

Q And who were they?

A And they did sit there. They were Mr. Moody, Mr. Beebe and I guess Mr. Fox.

Q Yes, sir.

A And our International officers, they composed the joint industry contract committee, they continued to function or attempted to function insofar as trying to implement the duties of the "protective wage" clause but it was stopped in its tracks by the Landrum-Griffin Act and enactment of the 8(e) of the Labor-Management Relations Act in that statute to the extent that the joint industry contract committee met in November and suspended all operations or attempted operations or enforcement of the clause itself. Now, if you ask if they continued in that sense, yes.

[5452] Q But they had manifested in black and white and on the face of a national contract their purposes before Landrum-Griffin was ever passed?

A It spoke for itself, certainly, so whatever is impugned to the PWC prior to Landrum-Griffin, it is there.

Q Of course, in a lawsuit we are not concerned with the legality of agreements or the acts to be taken pursuant to an agreement or the illegality of those acts. Isn't it true in an antitrust case that we are concerned about manifestations of agreement to do certain things?

A Now that is your statement, Mr. Rowntree.

MR. COMBS: We are objecting.

A I might put it in other words.

MR. COMBS: If Mr. Rowntree wants the opinion of this witness as a lawyer I am sure he would be glad to give it to him on it.

Q No, I am not asking for an opinion.

MR. COMBS: Whether or not you have got a good case, I am sure he would be glad to tell you. I object to that.

A He asked me for the legality of the clause. I tell you, I think it was legal, I think the action of the Circuit Court of Appeals of the District of Columbia in August of this year shows it to be.

Q You are still contending that it was an [5453] agreement to be pursued and a legal agreement?

A I say that it was legal when I first conceived of it and I think I have court imprimatur of it now, although it is almost—has been entirely obliterated and gone out of existence by virtue of the 1964 agreement.

Q And what was the basis for that court order, the basis of that court order was the antitrust laws?

A You mean the court decision?

Q Yes, sir.

A The Circuit Court of Appeals?

Q Yes, sir.

A They were interpreting the legality or non-legality of the clause in light of the amendment to Taft-Hartley.

Q And, of course, the Sherman Act had nothing to do with that decision?

A You want to ask me about the application of the Sherman Act to PWC, I will give you mine and the recorded authorities that were extended at the time I undertook to draft it that I think on the face made it directly and com-

pletely a legal clause and non-violative of the Sherman Act. I don't think it was, I don't think it is now.

Q All right. Is it not true that these operators in dealing with this "protective wage" clause were hiring the lawyers to investigate the legality of this

[5454] thing under the Antitrust Law?

MR. COMBS: If it please the Court, I object to this continuing line of questioning. I submit that we have got two lawyers here that can argue that question. If he wants to examine him from now on out, I don't think it is proper to ask this witness about the legality under the Antitrust Law of the PWC. That's for this Court to decide on the facts and not on—

MR. ROWNTREE: (Interposing) We had so much testimony about law the last six hours that I think that—

MR. COMBS: (Interposing) I certainly have not asked this witness his opinion as a legal witness. I have asked him the history of these clauses and what—

MR. ROWNTREE: (Interposing) Well, I will strike that question.

Q I notice, Mr. Hopkins, that in setting forth this "protective wage" clause in this Exhibit D443, the decision of the Court of Appeals for the District of Columbia on the "protective wage" clause, that they don't consider the language of the contract, the "protective wage" clause with respect to the obligation of the United Mine Workers under that clause. Do you recall that that is not involved?

A I recall the wording of the Court's opinion, yes, sir. It said the Board, in substance, that two other cases have been decided by this Court subsequent to

[5455] your first order of August, 1963, and we are sending it back down to you to reconsider it in light of the orange belt and truck drivers and other cases. I recall that.

Q Do you see anywhere in there in the language where it quotes the "protective wage" clause, that it refers to Paragraph A?

A There is no detailed discussion of the terms of the "protective wage" clause in this opinion, no, sir.

Q Do you not see that it is quoted in the footnote in part?

A Yes, sir, part of it is because that was the part that the Board had said violated 8(e).

Q There was no consideration in that proceeding of the obligation of the United Mine Workers whereby they agreed that they would not enter into, be a party to or permit any other kind of contract than the National Bituminous Coal Wage Agreement?

A Mr. Rowntree, if you are asking me if this contract opinion dealt or discussed the various segments of the "protective wage" clause, my answer is no because it speaks for itself, it was a question before it as to whether it was violative of 8(e) or not, that was the question before the National Labor Relations Board and that was the question involved on the petition for review that we filed and the enforcement petition filed by the Board itself.

[5456] The wording of the opinion which I referred to was that the Circuit Court of Appeals said flatly that the Board characterized the clause, quoting it, "As a union standards clause," I maintained that it was then and I maintain that it is now, it goes on to say that, "We think the Board should consider the applicability—

Q (Interposing) Now, is it not true that the only part of the "protective wage" clause they considered is the obligation of the operators?

A No, sir, I can't say that because you would have to go back to the full history of the challenge that was

addressed to the clause itself under the original charges that were filed. I can only say that this language speaks for itself.

Q As General Counsel for the United Mine Workers Senior Counsel, is it not true that we, through our stupidity, did the same thing in challenging the clause in Pennington and talked only about the operators' obligation and not the obligation of the union?

A Mr. Rowntree, if you are talking about legal mistakes that you may or may not have done or moves you may or may not have taken or could have taken, that is for your own decision, not mine.

Q Is it not true that the only part of the "protective wage" clause that the Supreme Court has in front
[5457] of it in the appendix was the obligation of the operators and not the obligation of the union?

A No, sir, not so. They had the complete record that had been made in the original instance that had gone through the Board.

Q This is the record, is it not?

MR. COMBS: I object to the further questioning of this witness on that point. The case speaks for itself and I would like to point out to the Court this, this decision speaks for itself. The witness has said that is entirely before the Board.

Justice White in the Pennington case made this remark concerning the Board's delineation and the Court's construction of the clauses in the Labor-Management Relations Act, this is part of Justice White's opinion, "Unquestionably the words demarcation of the bounds of the duty to bargain has great relevance to any consideration of the sweep of labor's antitrust immunity, for we are here concerned with harmonizing the Sherman Act with the national policy expressed in the National Labor Relations

Act, promoting the peaceful settlement of industrial disputes by subjecting labor-management to the predatory influence of negotiations." And they cite different cases.

Now, this case has been before the Board and before the Circuit Court of Appeals. I put the opinion
[5458] in as an exhibit for the convenience of the Court and the parties. The Court can take judicial notice of these authorities and I suggest that the General Counsel—that this witness is not in the capacity of the General Counsel of the Mine Workers. Now, if you want his opinion about whether you were stupid about not raising questions or whether or not you got a good lawsuit going here, I suggest that we are ready for him to testify.

MR. ROWNTREE: There is no issue here as to my stupidity, I admit it. I want to point out very firmly to the Court in this case that this record that went up in Pennington did not have any part of its appendix or in any brief we filed any argument concerning the express obligation of the United Mine Workers to impose the same kind of contract in the other collective bargaining units.

MR. COMBS: May I suggest this to counsel, while we are talking about—

MR. ROWNTREE: (Interposing) I am doing this because—

MR. COMBS: (Interposing) In all earnestness now in connection with your statement about your failure to raise this point, we put it in the record, it's in the appendix.

MR. ROWNTREE: I disagree with you, Mr. Combs, and that's why I want to file—

[5459] MR. COMBS: (Interposing) It's not in the appendix but we put it in.

MR. ROWNTREE: You put it in where?

MR. COMBS: In the transcript.

MR. ROWNTREE: Where is it in the transcript? If you will show me.

MR. COMBS: All right. You can find it if you want to get it.

MR. ROWNTREE: As an exhibit?

THE COURT: Gentlemen, let me just suggest this. This witness did on direct examination express an opinion that this Court of Appeals' decision supported his position, his contention. The witness has now been examined about that, but the construction of this opinion as a legal matter that can be covered in any brief that you file or in any oral argument that you may make.

Can we not move on now? You have both stated your positions.

MR. COMBS: I agree with that but I think there is one thing, your Honor, that is important. Counsel seems to be raising—

MR. ROWNTREE: (Interposing) This is very important.

MR. COMBS: It is not even in his theory, it is not in his trial brief here and for the very first
[5460] time when this witness gets on the stand he makes this unique statement here that they haven't given full consideration of this point here.

MR. ROWNTREE: Well, in Pennington, and I think this is very important, your Honor, this is off the examination of this witness but I think that everybody wants to get the right decision in the lower court in this case in the light of the Supreme Court's decision.

MR. COMBS: That's right.

MR. ROWNTREE: And what I am talking about now is the language of the majority that, "We think a union forfeits its exemption from the antitrust laws when it is

clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units."

Now, we say that this appendix and no brief in the Supreme Court pointed out the first part of this "protective wage" clause which had to do with the obligation of the union, agreed with with the Bituminous Coal Operators' Association that it would not enter into, be a party to nor permit any other kind of contract and the Supreme Court did not have that language in front of it.

MR. COMBS: I agree with counsel on that and I also agree with the Court's observation that is a question of briefing and a question of argument of counsel and not—

MR. ROWNTREE: (Interposing) Except

[5461] there is some factual area based upon the appendix and the facts that were presented to the Supreme Court.

MR. COMBS: I think you asked—

MR. ROWNTREE: (Interposing) I think it is highly important.

MR. COMBS: I think you asked the question on—

THE COURT: (Interposing) Suppose we go back to the examination of the witness and we will return to the argument at the appropriate point in the trial.

Q Now, Mr. Hopkins, this letter that was written by Mr. Kennedy to Mr. Fox in the bargaining of the 1958 contract?

A Yes, sir.

Q It referred to a "protective wage" clause submitted by Mr. Fox. Do you have a copy of that clause?

A No, sir, I do not. I can only say to my recollection it's like all bargaining conferences, so far as I know anything about it, when it comes to verbage that the lawyers talk about verbage back and forth repeatedly and different drafts were interchanged but I do not have—

although I am aware of the facts that the officers had submitted some counterpapers so-called through their lawyers and the union felt that it was not adequate and submitted a new draft.

Q Well, is it true that the operators' repre-
[5462] sentative, Mr. Fox, was submitting one form of "protective wage" clause as being different from the form that you were presenting?

A No, sir, I can't say that because the working basis or the framework was the draft that I had first prepared and, as all lawyers do, there is a debate as to the verbage or the provisions or the implementation of the provisions, but I can't say there was two different approaches, I can only tell you that I had a devil of a time in my arguments with them because they, of course, from their viewpoint were trying to protect their clients as against what they might feel was the union asking too much but—

Q (Interposing) Well, is it not true that they had certain interests of their own to serve and the union had certain interests of its own to serve?

A That's true in any bargaining, I assume, and certainly it is true when rival lawyers undertake to draft and agree upon language.

Q All right, sir. And there was concern for the Antitrust laws in this bargaining?

A Well, I certainly made as careful a study of it as I felt that I was capable of at that time, Mr. Rowntree, and I took into account existing cases and law and if you want me to detail the basis on which I—

Q (Interposing) No.

A On which I approached it I will tell you.

[5463] Q I asked you whether or not there was concern.

A Well, I had concern about it because I was authorized and directed by my principals to try to draft a clause that I certainly was going to try to draft one that would be within the four corners of the law.

Q And the operators had their own lawyers to handle this problem, I take it?

A That is so when it comes to drafting of language or agreement on a contract clause, yes, sir.

Q And when parties walk up to this position with a formal written agreement, with this kind of language in it, is it not true that the remarks they make after signing that agreement are going to be cautious with respect to the antitrust aspect of the matter?

A I assume they will be truthful also, Mr. Rowntree.

MR. COMBS: May I—

Q (Interposing) And cautious, is that not true?

A Why, any prudent man is going to speak if he thinks the circumstances require, whether it has to do with an antitrust charge or a fair labor standards charge or a Taft-Hartley charge or anything else. The statements as made, so far as the union were concerned, were true and I have reason to believe, so far as I know it, the statements made by the operators that was under economic compulsion is likewise true.

[5464] MR. ROWNTREE: I believe we have no further questions.

REDIRECT EXAMINATION

BY MR. COMBS:

Q Mr. Hopkins, counsel asked you questions a while ago about your statement about the 3-day work week being eliminated from the bargaining conferences by reason of the execution of the 1950 contract. In order to keep the record perfectly clear, I ask you again whether

or not that this 3-day work week was ever proposed to be included in a contract at all?

A It never was, Mr. Combs, in any fashion. It was purely a bargaining tactic unilaterally invoked by the union, as I have described it, was never proposed as a contract clause, considered or discussed as a contract clause.

Q Therefore, the question of elimination in the successor contract, the question of eliminating that clause would not have been present because there was no such clause to eliminate?

A None whatever. We had to eliminate the "able and willing" clause but the 3-day work week was a bargaining tactic and was never in the contract and never intended to be in the contract, so far as I know, and never proposed.

Q Do you know if in connection with the so-called Penello injunction, was the so-called 3-day work
[5465] week as such, was that asked for in that injunctive procedure?

A It was not.

Q Mr. Hopkins?

A It was not.

Q Now, Mr. Hopkins, in connection with the paragraph that Mr. Rowntree has asked you about in this "protective wage" clause, I take it that your testimony is that the contract speaks for itself, but in connection with that contract binding the representatives of the union to observe the enforcement of the contract, was there a discussion on that or why did the operators ask for that particular section?

MR. ROWNTREE: We object to why they, why the operators asked for the section.

MR. COMBS: All right. You raised the question,

so I will withdraw the question.

MR. ROWNTREE: That goes to a state of mind.

MR. COMBS: I was strictly trying to clear the questions you had asked, so I withdraw the question.

MR. ROWNTREE: In other words, counsel may ask what they said and did and the way he acted but certainly you can't ask the question of why.

MR. COMBS: I withdraw the question and I will rephrase it.

Q What happened in connection with the negotiations for this paragraph that counsel is talking about

[5466] in connection with the union obligation, who demanded that?

A Well, the operators did.

Q And did they state why they were demanding it?

A Well, they asked us to give a reciprocal commitment in the contract that we would enforce the agreement as against all signatories to the agreement equally and just as we were asking them to enforce their duties, why, and we, of course, acquiesced in that, there was no question about us undertaking to enforce it equally against all signatory operators, we always did.

Q Now, Mr. Hopkins, did this have anything to do with any operator other than signatory operators?

A None whatsoever.

Q Did that have any relationship to an agreement on the part of the union that it would impose any kind of a contract on other than the parties that were negotiating at that time?

A Certainly not because there was no commitment of any kind or character of that sort.

MR. COMBS: No further questions.

THE COURT: Mr. Hopkins, from the examination of other witnesses I have gathered that there may be

some or has been, at least in the early stages of this lawsuit, some question as to exactly what the language in the 1964 agreement accomplished, the elimi-
[5467] nation of the "protective wage" clause?

THE WITNESS: Well, the '64 agreement, I don't have it in front of me, your Honor, but, as I recall, it was like many other agreements—

MR. COMBS: (Interposing) Pardon me one moment. Let me get it for you. It is Exhibit 369, the 1964 agreement.

THE WITNESS: The 1964 contract, with a copy now in front of me, on the first page, your Honor, recites the execution of the September 29, 1952, contract and says, "The operators signatory to this agreement have now negotiated with the United Mine Workers certain additional amendments to the agreement of 1950 and it is the intent and agreement of all the parties hereto to amend and supplement and as amended and supplemented to carry forward as to preserve the terms and conditions of said National Bituminous Coal Wage Agreement of 1950 as amended September the 29th, 1950, said National Bituminous Coal Wage Agreement of 1950 and all previous agreements as therein provided."

"As therein provided" meaning the 1950 contract because the 1950 contract was always the basis for agreement in subsequent years, so the 1958 contract containing the protective wage clause was specifically and purposely, the "protective wage" clause was specifically and purposely eliminated and such sections of the '58 con-
tract as may have been pertinent outside of the
[5468] PWC were reiterated into the verbage of the '64 contract, for instance, the mine safety program, but the "protective wage" clause was unquestionably and intentionally omitted.

THE COURT: All right.

MR. COMBS: May I ask a question on that?

BY MR. COMBS:

Q Mr. Hopkins, that has been the customary practice to carry forward the contract by specific name?

A Yes, it has traditionally so. For instance, there had been no district agreement negotiated, your Honor, since March, 1943. Prior to that time it had been the policy of the national agreement being executed, they would carry it back to the district and the districts execute new agreements, they were frozen during the war years and for that reason—

THE COURT: (Interposing) What was frozen?

THE WITNESS: The district agreements, as they had been existing in prior years, and because of the impact of the government contract, Ickes-Lewis, the Krug-Lewis agreement and so on, it became the practice and the proceeding that we always did carry forward by reference preceding contracts and when it got up to 1950, why, we recited that it carried forward the contracts as they existed on March 31, 1943, of the 6-day work week and the district agreements as they existed on
[5469] March 31, 1943, that was to carry forward some degree of understanding and continuity in the industry as to what those situations were, but this was no unusual practice, it was a practice that we had followed, so after the 1950 agreement we used it as a basis of supplementing or amending and carrying forward that part which was agreed to and eliminating, either directly or by failure to carry forward by reference, portions of it such as the 1958—

THE COURT: (Interposing) Right on that point, when we speak of "North-South differentials," can you explain to me what we are talking about and what the

present status of the contract is with regard to the "North South differential"?

THE WITNESS: It was mentioned back in 1941, the contract was the differential, as I recall, and an understanding of the wage rates between the mines that were operating in the South and the North. That was eliminated by virtue of the negotiations in the 1941 contract and there has been no question of differentials since. It is a settled issue for 20-odd years.

MR. COMBS: For the benefit of the Court and counsel I can clarify that just a little, I think it would help everybody, if counsel has no objections.

Do you have any objections?

MR. ROWNTREE: About what?

[5470] MR. COMBS: About the differential that the Court was asking about.

MR. ROWNTREE: No, I have no objection.

THE COURT: I was under the impression, that is why I asked that question, that there still may exist some differential and that that was one of the problems that separated the BCOA and the Southern Operators, but apparently I have been under some misapprehension.

MR. ROWNTREE: I don't think there is any differential today.

MR. COMBS: May I make this statement without testifying? I think that the record will bear this out, the 1943 contract had the elimination of a 40 cents differential between the North and the South. That was the mediation board report, however, the tonnage differential was not eliminated and there was about a 15 cents difference at that time, also the 40 cents differential, which was established by the NRA and which is in this record, was an average, it was a weighted average and it didn't go clearly—so actually you have impacted since 1943

the wage increases, 1945, to be exact, of $16.25 a day that were even, however, they are also impacted on a base that is not equal because there are different wage rates in Tennessee, Alabama, some places in West Virginia, there are still differences in the tonnage rates and the wage rates because the $16.25, going
[5471] back to 1945, is impacted on that base and it came up through the NRA and through these other differentials. I think that is accurate.

MR. ROWNTREE: Is it not true that the Walsh-Healey findings of the Secretary of Labor set forth with the existing wage basic rate in all of the different districts as of 1958, before the contract of '58?

MR. COMBS: Yes, it set forth the minimum wages now and they are different and they were also set forth with relation to the old Guffey Coal Act districts and they are different, so that in any event in Walsh-Healey, you can take that in Montana or you can take it in Illinois or you can take it in Southern Tennessee and there are differences there in the Walsh-Healey rates which will show in the executive order. I don't think we have it in this case but we did have it in Pennington.

MR. ROWNTREE: But the basic rate is set forth in those different districts in that Walsh-Healey finding.

MR. COMBS: Which are not uniform throughout the coal industry.

MR. ROWNTREE: That's right. I wonder if we couldn't admit for the purpose of showing those rates a copy of that finding?

MR. COMBS: Sir?

MR. ROWNTREE: What about putting into
[5472] evidence, would you agree to that finding for the purpose of showing what these various rates are across the country?

MR. COMBS: If counsel has a copy. I have absolutely no objection. I don't have a copy. It is in the Federal Register, I would assume the Court can take judicial notice, or if you want to furnish it.

MR. ROWNTREE: I think it would be well to submit that.

MR. COMBS: I think so, too. I think it would clarify this situation because I am sure that nobody wants any misinformation about this fact. That is not disputed.

MR. ROWNTREE: And to that would be added the increase of '58 and '64.

THE WITNESS: I don't want to be counsel and witness.

THE COURT: Not as a part of the Walsh-Healey?

MR. ROWNTREE: No, to show the existing rate, present day rate.

MR. COMBS: Yes. Now, one more question of counsel, since we've got this started.

Q I might ask you this, Mr. Hopkins, is there any clause in the contract now in existence, the 1964 contract or has there been, to your knowledge, that would prevent the union if it wanted to from negotiating an entirely different contract, either higher or lower, with
[5473] the operators not signatory to the 1950 agreement?

A No, sir.

MR. COMBS: That's all.

THE COURT: All right. Now, anything further of this witness? If not, may he be excused?

MR. ROWNTREE: Just one moment, your Honor.

THE COURT: All right.

MR. ROWNTREE: If your Honor please, we object to that last question. I think the contract speaks for itself.

MR. COMBS: Well, I asked him to his knowledge. I think that is a proper question, to his knowledge. I

think I would have a right to ask the question to his knowledge is there any such clause.

MR. ROWNTREE: You asked him to interpret the contract.

MR. COMBS: No, I asked him to his knowledge is there any clause in the contract that would prevent the union from negotiating with other operators any kind of a contract it wanted to negotiate with them.

MR. ROWNTREE: Well, we take the position that the clause definitely does. To that extent we object to that question.

MR. COMBS: Well, that is argumentative, of course, but I asked of the witness' knowledge and I think

[5474] that was a proper response.

THE COURT: Well, I believe since an objection is made that that is calling for an opinion upon a document in the language in the document. I believe I will sustain the objection.

* * *

[5519] MR. COMBS: If the Court please, the defendants rest.

* * *

[5541] MR. ROWNTREE: During the examination of Mr. Boyle we asked for counsel to provide a copy of the United Mine Worker Journal for February 15, 1963, Page 5, and counsel have kindly furnished that. I wish to read this statement in connection with a report on the explosion at the Robina No. 3 Mine of U. S. Steel Corporation on December 6, 1962, wherein 37 men were killed.

MR. COMBS: What page is that on?

MR. ROWNTREE: This is on Page 5. In commenting on the second disaster, referring to the Robina dis-

aster, UMWA President W. A. (Tony) Boyle said in a statement which was published in the January 15th issue of the Journal, "This disaster has confirmed the belief I have held for some time that we may be mechanizing the coal industry past the point of safety. Concern for production should not outweigh the industry's protection of the precious human lives in its custody."

I would like to read from the reports of the

[5542] United Mine Workers of America Welfare and Retirement Fund.

* * *

MR. ROWNTREE: This report shows receipts from tonnage collections received from operators under the provisions of the National Bituminous Coal Wage Agreement of 1947, 1958 and 1950 and amendments thereto.

For the period July 1, 1956, to June 30, 1957, of $155,318,828.09.

The report for the next year—

* * *

[5543] MR. ROWNTREE: July 1, 1957, to June 30, 1958, the receipts were $138,297,694.21.

The next period from July 1, 1958, to June 30, 1959, receipts were $130,981,039.04.

* * *

[5553] MR. ROWNTREE: That closes the plaintiffs' rebuttal, your Honor.

* * *

[5555] MR. COMBS: That's all the sur-rebuttal we have.

* * *

EXHIBIT P-138

List of Suits Instituted in Various Courts by Trustees of the United Mine Workers of America Welfare and Retirement Fund Between January 1, 1954 and December 1, 1960

District Court	Trustees v. Name of Company	Date Filed	Disposition
E. D. Tennessee	The Benedict Coal Corporation	5/27/1954	Judgment
E. D. Tennessee	The Harvey Coal Corporation	7/15/1954	Dismissed
Middle D. Tenn	Fentress Coal & Coke Company	7/31/1956	Judgment
E. D. Tennessee	E. Dick Burrow Coal Company	1/ 2/1958	Pending
E. D. Tennessee	Fesler Coal Company	1/ 6/1958	Pending
E. D. Tennessee	Phillips Brothers Coal Company	1/ 6/1958	Pending
E. D. Tennessee	Stansberry Coal Company	1/ 6/1958	Pending
E. D. Tennessee	E. A. Worley Coal Company	1/15/1958	Default Judgment
E. D. Tennessee	Arnold Strip Mining Company	1/29/1958	Pending
E. D. Tennessee	Paul Gibbs Coal Company	3/ 6/1958	Pending
E. D. Tennessee	Tennco, Incorporated	3/13/1958	Pending
E. D. Tennessee	Geo. A. Bryant & Sons Coal Co.	4/17/1958	Pending
E. D. Tennessee	J. H. Graham Coal Company	4/17/1958	Pending
E. D. Tennessee	Patrick & Hampton Coal Company	4/21/1958	Pending
E. D. Tennessee	Goforth Coal Company	5/15/1958	Pending
E. D. Tennessee	W. R. Parten Coal Company	6/13/1958	Pending
E. D. Tennessee	McPherson Coal Company	6/30/1958	Pending
E. D. Tennessee	H. A. Daffron Coal Company	7/22/1958	Pending
E. D. Tennessee	M. & T. Coal Company	7/22/1958	Pending
E. D. Tennessee	W. T. Morrison Coal Company	7/22/1958	Pending
E. D. Tennessee	F. W. Pryor Coal Company	7/22/1958	Pending
E. D. Tennessee	Earl Patton Coal Company	10/ 6/1958	Pending
E. D. Tennessee	Hampton E. Patton Coal Company	10/ 6/1958	Pending

Exhibit P-138 (Continued)

District Court	Trustees v. Name of Company	Date Filed	Disposition
E.D. Tennessee	M. T. Dixon Coal Company	10/28/1958	Pending
E.D. Tennessee	Willis Flynn Coal Company	10/28/1958	Pending
E.D. Tennessee	R.B. Ivey Coal Company	10/28/1958	Pending
E.D. Tennessee	Roy Land Coal Company	10/28/1958	Pending
E.D. Tennessee	Marshall Meeks Coal Company	10/28/1958	Pending
E.D. Tennessee	Hershel Myers Coal Company	10/28/1958	Pending
E.D. Tennessee	Waldo Myers Coal Company	10/28/1958	Pending
E.D. Tennessee	Leon Nunley Coal Company	10/28/1958	Pending
E.D. Tennessee	Horace J. Scissom Coal Company	10/28/1958	Pending
E.D. Tennessee	Stephenson & Stephenson Coal Co.	10/28/1958	Pending
E.D. Tennessee	M. H. Wideman Coal Company	10/28/1958	Pending
E.D. Tennessee	Will Land Coal Company	10/31/1958	Pending
E.D. Tennessee	Elder Lockhart Coal Company	10/31/1958	Pending
E.D. Tennessee	Aaron Presnell Coal Company	10/31/1958	Pending
E.D. Tennessee	Howard Higgins Coal Company	11/10/1958	Pending
E.D. Tennessee	Ramsey Coal Company	11/10/1958	Pending
E.D. Tennessee	J.W. Sanders Coal Company	11/10/1958	Pending
E.D. Tennessee	James Patton Coal Company	12/ 9/1958	Pending
E.D. Tennessee	Dewey Trussell Coal Company	12/ 9/1958	Pending
E.D. Tennessee	Huntsville Branch Coal Co., Inc.	1/29/1959	Dismissed
E.D. Tennessee	Charlie Martin Coal Company	1/30/1959	Pending
E.D. Tennessee	Edward Nunley Coal Company	30/1959	Pending
E.D. Tennessee	S. T. Smith Coal Company	2/ 4/1959	Default Judgment

District Court	Trustees v. Name of Company	Date Filed	Disposition
E. D. Tennessee	Sam R. Griffith Coal Co. and/or Soft Rock Coal Company	2/17/1959	Default Judgment
E.D. Tennessee	Cordell Coal & Construction Co. J. A. Cordell Coal Company	3/19/1959	Pending
E.D. Tennessee	Howard Coal & Mining Company	3/23/1959	Consent Judgment
E.D. Tennessee	Tennessee Consolidated Coal Co.	3/31/1960	Pending

Exhibit P-138 (Continued)

LIST OF AWARDS

E. Ford, Official Report—COAL INVITATION TO BID—REQUISITION 17/308325

Name of Contractor	Contract Term Mos.	Tons/Wk. Max.	Shipping Point	Ship Via	Bid Price	Trans Cost	Plant Price
AWARDED JUNE 4, 1954, FOR DELIVERY TO KINGSTON							
Black Eagle Coal & Coke	12	185	Near Pioneer, Tenn.	Truck	$4.50	—	$4.50
Capitol Coal Sales, Inc.	12	600	Stevens Switch, Tenn.	Truck	4.70	—	4.70
Capitol Coal Sales, Inc.	12	800	Stevens Switch, Tenn.	Truck	4.55	—	4.55
Royal Fuel Co.	12	625	Pine Knot, Ky.	CNO&TP	3.48	1.07	4.55
Capitol Coal Sales	36	2000	Newtown, Tenn.	Tenn.	3.05	1.07	4.12
Stearns Coal & Lumber	12	900	Oz, Ky.	K&T	3.57	1.07	4.64
G & E Coal Co.	24	1250	Hunter, Robbins, Winfield, Tenn. or Pine Knot, Ky.	CNO&TP	3.53	1.07	4.60
Stearns Coal & Lumber	12	2000	Blue Heron, Ky.	K&T	3.35	1.07	4.42
Stearns Coal & Lumber	12	1150	Hemlock, Ky.	K&T	3.50	1.07	4.57
Stearns Coal & Lumber	12	300	Clairfield, Tenn.	K&T	3.52	1.07	4.59
Royal Fuel Co.	12	600	Fonde, Ky.	Sou.	3.60	1.07	4.67
Love & Amos Coal Co.	24	5000	Jellico, Tenn.	Sou.	3.75	1.07	4.82
Dorryoott Coal & Coke	12	1250	Clairfield, Tenn.	Sou.	3.28	1.07	4.35
Dorryoott Coal & Coke	12	500	Clairfield, Tenn.	Sou.	3.85	1.07	4.92
AWARDED JUNE 28, 1954 FOR DELIVERY TO KINGSTON							
Southwestern Fuel Co.	12	1500	Somerset, Ky.	CNO&TP	3.35	1.07	4.42
Capitol Coal Sales, Inc.	12	600	Pine Knot, Ky.	CNO&TP	3.50	1.07	4.57
Capitol Coal Sales, Inc.	36	300	Jellico, Tenn.	Sou.	3.80	1.07	4.87
Capitol Coal Sales, Inc. & Excavating & Engineering Services	12	350	Briceville, Tenn.	Sou.	3.55	1.07	4.62
Approximately 19,710 Tons/Wk. (Max.)							
AWARDED JUNE 28, 1954, FOR DELIVERY TO WATTS BAR							
Williams Coal Co.	12	2400	Tenn. River	Barge	4.45	—	4.45

EXHIBIT P-146

1040a

[1] Contract may be cancelled by contractor on six months' written notice provided notice is given within 30 days after receipt of notice of five cents or more per ton penalties for any quarter.

[2] Tonnage may be increased up to fifty percent at the end of three months and up to 100 percent at the end of six months at TVA option.

Evidence that TVA is still pursuing its shortsighted and dog-eat-dog policy of buying coal, is offered by the latest contract figures of coal bids awarded in early June for delivery to the Kingston, Tenn., plant. Analysis of the coal awards above, most of which went to non-union companies and brokers who buy from small dog-hole mines that do not observe union wages, hours, welfare or conditions, and also disregard state and federal safety codes and the Walsh-Healy Act, shows how the TVA coal purchase policy operates.

Note the low prices of coal at the mine which even transportation costs are still below the prices quoted by established operators and generally recognized as standard prices for the industry. Some of the coal to fill these orders is so-called "distress coal" which the brokers pick up from established operators who have a temporary surplus due to the fact that they are unable to obtain TVA business on legitimate terms.

In this particular award list, transportation is mostly by rail and barge, with only three listing truck delivery, but most of the TVA tonnage is moved by trucks from the mine to either a central railroad ramp or direct to the TVA power plants. The TVA's irresponsible policy of awarding contracts to brokers and non-union operators is under widespread investigation and is the subject of severe critical comment in Congress and industry.

EXHIBIT P-357

Excerpts from "1964 BITUMINOUS COAL DATA"

TABLE NO. 92 - NET INCOME AND FEDERAL INCOME TAXES OF CORPORATIONS ENGAGED IN BITUMINOUS COAL MINING 1917 - 1962

(Thousands of Dollars)

Year	Number of Returns	Number Reporting Net Income	Number Reporting No Net Income	Net Income Companies Showing Income	Deficit Companies Showing Loss	Net Income or Loss	Federal Taxes	Profit or Loss (-) after Federal Taxes
1917	1234	1149	85	$ 204,564	646	$ 203,918	$ 70,962	132,956
1921	1234	503	731	59,164	30,275	28,889	10,559	18,330
1925	3650	1065	2585	40,463	62,826	-(22,363)	4,517	-(26,880)
1929	2469	934	1535	40,069	51,891	-(11,822)	4,000	-(15,822)
1933	1851	396	1455	7,243	54,792	-(47,549)	1,029	-(48,578)
1937	1815	539	1276	22,289	23,066	-(777)	3,208	-(3,985)
1938	1887	363	1524	11,112	37,779	-(26,667)	1,661	-(28,328)
1939	1820	505	1315	18,257	24,425	-(6,168)	2,844	-(9,012)
1940	1756	676	1080	30,013	15,617	14,396	6,593	7,803
1941	1722	859	863	56,831	14,180	42,651	19,065	23,586
1942	1737	906	831	77,042	9,127	67,915	33,790	34,125
1943	1623	975	648	103,153	6,996	96,157	49,244	46,913
1944	1584	932	652	101,000	8,263	92,737	48,926	43,811
1945	1544	915	629	81,412	10,119	71,293	35,613	35,680
1946	1640	1013	627	89,553	9,016	80,537	29,975	50,562
1947	1837	1371	466	264,751	6,093	258,658	90,224	168,434
1948	2163	1434	729	318,597	8,971	309,626	113,038	196,588
1949	2070	1033	1037	122,803	25,480	97,323	43,038	54,285
1950	1988	1104	884	180,350	17,162	163,188	69,423	93,765
1951	1813	912	901	139,464	25,769	113,695	57,096	56,599
1952	1665	789	876	88,263	19,069	69,194	35,713	33,481
1953	1572	632	940	72,747	31,192	41,555	28,825	12,730
1954	1424	462	962	47,180	31,933	15,247	15,948	- (701)
1955	1592	823	769	87,399	19,982	67,417	30,418	36,999
1956	1800	900	900	135,3[illegible]	16,088	119,275	48,802	70,473
1957	1750	816	934	114,1[illegible]	25,386	88,802	44,799	44,003
1958	1481	800	681	72,584	25,792	46,792	25,602	21,190
1959	1961	905	1056	67,970	37,398	30,572	22,545	8,027
1960	1628	801	1027	70,080	39,789	30,291	22,194	8,097
1961	1883	956	927	86,094	29,061	57,033	25,521	31,512
1962 1/	2229	[illegible]	[illegible]	66,829	33,706	33,119	[illegible]	[illegible]

Exhibit P-357 (Continued)

TABLE NO. 31 - OUTPUT PER MAN AT BITUMINOUS COAL MINES, 1920 - 1964

(Net Tons)

Year	Output per man per day				Output per man per year all mines
	Underground mines	Auger mines	Strip mines	All mines	
1920	3.97	--	7.20	4.00	881
1921	4.18	--	8.28	4.20	627
1922	4.24	--	8.09	4.28	609
1923	4.43	--	9.32	4.47	801
1924	4.50	--	9.91	4.56	781
1925	4.45	--	11.18	4.52	884
1926	4.42	--	11.13	4.50	966
1927	4.47	--	11.06	4.55	872
1928	4.61	--	13.02	4.73	959
1929	4.73	--	14.08	4.85	1,064
1930	4.93	--	16.21	5.06	948
1931	5.12	--	17.68	5 30	849
1932	4.99	--	16.95	5.22	762
1933	4.60	--	13.59	4.78	797
1934	4.23	--	13.28	4.40	785
1935	4.32	--	12.01	4.50	805
1936	4.42	--	13.91	4.62	920
1937	--	--	--	4.69	906
1938	4.60	--	15.00	4.89	790
1939	4.92	--	14.68	5.25	936
1940	4.86	--	15.63	5.19	1,049
1941	4.83	--	15.59	5.20	1,125
1942	4.74	--	15.52	5.12	1,261
1943	4.89	--	15.15	5.38	1,419
1944	5.04	--	15.89	5.67	1,575
1945	5.04	--	15.46	5.78	1,508
1946	5.43	--	15.73	6.30	1,347
1947	5.49	--	15.93	6.42	1,504
1948	5.31	--	15.28	6.26	1,356
1949	5.42	--	15.33	6.43	1,010
1950	5.75	--	15.66	6.77	1,239
1951	6.08	--	16.02	7.04	1,429
1952	6.37	20.07	16.77	7.47	1,389
1953	7.01	25.30	17.62	8.17	1,560
1954	7.99	24.12	19.64	9.47	1,724
1955	8.28	22.22	21.12	9.84	2,064
1956	8.62	24.85	21.18	10.28	2,195
1957	8.91	26.19	21.64	10.59	2,155
1958	9.38	28.15	21.54	11.33	2,079
1959	10.08	28.77	22.65	12.22	2,294
1960	10.64	31.36	22.93	12.83	2,453
1961	11.41	30.61	25.00	13.87	2,678
1962	11.97	34.61	26.76	14.72	2,935
1963	12.78	38.87	28.69	15.83	3,240
1964 1/	--	--	--	15.85	3,364

1/ Preliminary.

Source: U. S. Bureau of Mines.

EXHIBIT D-125

Excerpts from Proceedings of the Thirty-Third Constitutional Convention of the UNITED MINE WORKERS OF AMERICA

Held in the City of Indianapolis, Indiana January 23 to January 31, 1934, Inclusive

[Volume One, Page 188]

* * *

In lieu of the resolution your committee submits the following substitute:

The introduction of modern machinery in the mining industry has brought grave economic problems. The mining industry has been affected by mechanization to a greater degree than any of our basic industries. It has increased production with vital effect, both by displacement of labor and ruinous competitive relations.

The award of the Bituminous Coal Commission in 1920 established the right of coal companies to introduce labor-saving devices and denied the right of the miners to object. The award recognized the principles of the workers' participation in the benefits derived from labor saving.

The provisions of the Coal Code under the National Recovery Act give employers the option to introduce labor-saving devices. All this leads us to the following conclusion: That rather than object to mechanization of industry we should devote our efforts toward shorter work day and work week, toward a greater participation in the blessings of invention, of science, of progress,

with the fundamental objectives of making mankind the masters of their destiny and subjecting machines, science and modern developments of industry to human kind.

We advise this course of moving forward and recommend the adoption of the committee's substitute resolution.

* * *

EXHIBIT D-126

Excerpts from Proceedings of the Thirty-Fourth Constitutional Convention of the UNITED MINE WORKERS OF AMERICA

Held in the City of Washington, D. C. January 28 to February 7, 1936, Inclusive

[Volume One, Page 23]

* * *

The introduction of new machinery and other servicing devices by certain of the more well financed producing groups in the industry is creating a greater disparity in rates between those units and the remainder of the producers whose financial condition, or other circumstances, preclude the introduction of these newer devices at their operations. This, of course, constitutes a deadly competitive situation for coal operators who may be less fortunately situated than those who have the money to lessen their cost of production through the use of new machinery. Of necessity it is also a

Exhibit D-126

grave problem for the United Mine Workers of America

The ultimate solution of all existing inequitable differentials lies inevitably upon their disposition in accordance with the yardstick of reason and logic. We are hopeful that the joint wisdom of capital and labor in the industry will prevail, and that the resort to economic force to cure the evils incident to this distressing situation on the part of either operator or mine worker will not be necessary.

The fundamental objective of the United Mine Workers' organization for the solution of these very distressing problems lies directly in a system of proper Federal regulation, which will encompass a synchronized system of price fixing and allocation of tonnages on a basis equitably fair to mine workers and operators alike.

* * *

EXHIBIT D-127

Excerpts from Proceedings of the Thirty-Fifth Constitutional Convention of the UNITED MINE WORKERS OF AMERICA

Held in the City of Washington, D. C. January 25 to February 3, 1938, Inclusive

[Volume One, Page 21]

* * *

The organization should continue to strive for improved standards, higher wages and better working conditions. It should also, through the processes of collective reasoning, endeavor jointly with the coal operators to eliminate the inequities of rates both in and between districts, maintaining, through balanced judgments, a parity in competitive conditions which will as nearly as practicable allow each of the producers in the several districts an opportunity to secure their fair share of the markets and at the same time provide, as equitably as possible, equal work opportunities for all of the mine workers employed in the various districts.

* * *

EXHIBIT D-134

Excerpts from Proceedings of the Forty-Second Consecutive Constitutional Convention of the UNITED MINE WORKERS OF AMERICA Washington, D. C.

Cincinnati, Ohio
October 2 to 9, 1956

[Volume One, Page 134]

* * *

THE INTERNATIONAL EXECUTIVE BOARD

The International Executive Board has exercised its authority as provided in our constitution in directing the workings of the organization between conventions.

The members of the Board discharged its responsibilities involving our contract and constitution in almost every district under our jurisdiction. Their knowledge and vast experience have equipped them to render sound judgment in resolving all questions that come before the International Executive Board.

Their cooperation, advice and counsel have helped lighten the administrative load of your International officers.

The questions of carrying out our constitution and our contractural obligations with the coal operators have been considered by the Board. The Board decided that the provision of our contract that provides for the settlement of disputes shall be carried out. Our contract reads as follows:

Exhibit D-134 (Continued)

3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts.

In order to bring this to the attention of our membership, the Board adopted by unanimous vote the following policy and mailed a copy to each of our members:

May 17, 1956

To the Officers and Members of the United Mine Workers of America:

DECLARATION OF POLICY

Local work stoppages involving a mine, in whole or in part, not officially authorized by the United Mine Workers of America, were prohibited by order of the International Executive Board, dated October 24, 1951.

Certain local unions have seen fit to ignore that policy and wrongfully authorize and participate in such unwarranted stoppages. In doing so, these local unions and the membership thereof are defiant of their Union and imperil the welfare of all other members.

The International Executive Board, endowed with

Exhibit D-134 (Continued)

authority to take such action, reaffirms its previous declaration, dated October 24, 1951, and again instructs compliance therewith.

[135] The Executive Board further advises as follows:

1. Local Unions will utilize the machinery of the Joint Wage Agreement for the settlement of all disputes arising thereunder.

2. Local Unions failing to do so, and resorting to local stoppages, will be subject to discipline and penalties will be imposed by the International Executive Board.

3. Local Unions engaged in unwarranted local stoppages, and picketing other mines not engaged in the dispute, will suffer double penalties.

4. Local Union officers giving aid and comfort to such unwarranted stoppages, or who are guilty of negligence in their failure to prevent them, will be subject to disciplinary action by the International Executive Board, at its option. Individual members of the local union, guilty of reprehensible conduct in promoting, conducting, or prolonging such unwarranted stoppages, will in like fashion be subject to disciplinary action and penalties imposed by the International Executive Board.

5. Sundry local unions, recently guilty of ignoring the machinery of the Joint Wage Agreement, have been disciplined and penalties imposed. Repetition of their offenses will bring further, more severe penalties.

The International Executive Board calls upon all loyal members to give active support to the sound policy of honoring the provisions of the Joint Industry Wage Agreement and the laws of this Union. Local Unions and individual members moving in defiance and imperiling

Exhibit D-134 (Continued)

the welfare of all the members of this Union must be prepared to accept responsibility for their action and the penalties which will be inevitable.

Done this 17th Day of May, 1956 by the International Executive Board, United Mine Workers of America, Washington, D. C.
(Seal)

ATTEST:

JOHN OWENS

Secretary-Treasurer

* * *

[439] **Vice-President Kennedy:** Mr. Chairman, I might say for the information of the delegates, which Mr. Lewis is aware of, that the first question brought up in the recent conferences by the President of the Bituminous Coal Operators' Association was this very subject, and they wanted to know what could be done with respect to the making of a contract if these local strikes were to continue.

* * *

EXHIBIT D-369

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950

Effective March 5, 1950, to June 30, 1952
Executed at Washington, D. C., March 5, 1950

THIS AGREEMENT, made this 5th day of March, 1950, by and between the coal operators and associations signatory hereto hereinafter referred to as Operators, parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as Mine Workers, on behalf of each member thereof, party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements previous agreements as herein provided. This Agreement (subject to the amendments, modifications and supplements as hereinafter provided) carries forward and preserves the terms and conditions of the Appalachian Joint Wage Agreement (dated June 19, 1941) effective April 1, 1941, to March 31, 1943, the Supplemental Six Day Work Week Agreement, the National Bituminous Coal Wage Agreement (dated April 11, 1945) effective April 1, 1945, and all the various District Agreements executed between the United Mine Workers of America and the various Operators and Coal Associations (based upon the aforesaid basic agreements) as they existed on March 31, 1946, subject to the terms and conditions of this Agreement and as amended, modified and supplemented by this Agreement as herein set out.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting

parties, as defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement.

EXEMPTIONS UNDER THIS AGREEMENT

It is the intention of this Agreement to reserve to management and except from this Agreement an adequate force of supervisory employees to effectively conduct the safe and efficient operation of the mines and at the same time, to provide against the abuse of such exemptions by excepting more such employees than are reasonably required for that purpose.

Coal Inspectors and Weigh Bosses at mines where men are paid by the ton, Watchmen, Clerks, Engineering and Technical forces of the operator, working at or from a

District or local mine office, are exempt from this agreement.

All other employees working in or about the mines shall be included in this Agreement except essential supervisors in fact such as: Mine Foremen, Assistant Mine Foremen who, in the usual performance of their duties, may make examinations for gas as prescribed by law, and such other supervisors as are in charge of any class of labor inside or outside of the mines and who perform no production work.

The Union will not seek to organize or ask recognition for such excepted supervisor employees during the life of this contract.

The Operators shall not use this provision to exempt from the provisions of this Agreement as supervisors, more men than are necessary for the safe and efficient operation of the mine, taking into consideration the area covered by the workings, roof conditions, drainage conditions, explosion hazards, and the ability of supervisors, due to thickness of the seam, to make the essential number of visits to the working faces as required by law and safety regulations.

Disputes arising under this section shall be referred to a Joint Board of Review consisting of two representatives of the Union and two representatives of the Operators whose decision shall be final and binding on the parties.

MINE SAFETY PROGRAM

(a) Mine Safety Code

The Federal Mine Safety Code for bituminous coal

and lignite mines of the United States, adopted pursuant to an agreement dated May 29, 1946, between the Secretary of the Interior and the President of the United Mine Workers of America and promulgated July 24, 1946, is hereby adopted and incorporated by reference in this contract as a code for health and safety in bituminous and lignite mines of the parties of the first part, with the following exceptions and alterations:

(1) The opening paragraph beginning with the words "pursuant to" and ending with the words "Executive Order" is stricken out.

(2) The words "Coal Mines Administrator" are stricken out wherever they appear.

(3) Sections 5(a) and 5(b) of Article XII and all of Article XIV are stricken out.

(4) References in the Code to its effective date shall be deemed to refer to the effective date of this contract.

(b) Enforcement

(1) Reports of the Federal Coal Mines Inspectors: Wherever Inspectors of the Federal Bureau of Mines, in making their inspections in accordance with authority as provided in Public Law 49, 79th Congress, find that there are violations of this Code and make recommendations for the elimination of such non-compliance, the Operators shall promptly comply with such recommendations except as modified in paragraph two of this subdivision (b).

(2) Whenever either party to the contract feels that compliance with the recommendations of the Federal Mine Inspectors as provided above would cause irreparable damage or great injustice, they may appeal such recom-

mendation to the Joint Board of Review as hereinafter provided.

(c) Review and Revision

In order to carry out the intent and purposes of the agreement affecting the Mine Safety Code, it is agreed that from time to time joint consultations shall be had with the U. S. Bureau of Mines looking toward review and appropriate revision of the Mine Safety Code.

(d) Joint Industry Safety Committee

There is hereby established under this Agreement a Joint Industry Safety Committee composed of four members, two of whom will be appointed by the Mine Workers and two of whom will be appointed by the Operators, whose duty it shall be to (1) arbitrate any appeal which is filed with it by any Operator or any Mine Worker who feels that any reported violations of the Code and recommendation of compliance by a Federal Coal Mine Inspector has not been justly reported or that the action required of him to correct the violation would subject him to irreparable damage or great injustice; and (2) to consult with the U. S. Bureau of Mines in accordance with the provisions of Section (c) above.

(e) Mine Safety Committee

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Committee Members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

The Mine Safety Committee may inspect any mine

development or equipment used in producing coal. If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the Operator is required to follow the recommendation of the Committee.

If the Safety Committee in closing down an unsafe area acts arbitrarily and capriciously, members of such Committee may be removed from the Committee. Grievances that may arise as a result of a request for removal of a member of the Safety Committee under this section shall be handled in accordance with the provisions providing for settlement of disputes.

The Safety Committee and Operators shall maintain such records concerning inspections, findings, recommendations, and actions relating to this provision of the Agreement as may be required, and copies of all reports made by the Safety Committee shall be filed with the Operators.

The International Union, United Mine Workers of America may designate memorial periods not exceeding a total of 5 days in the period ending April 1st, 1951, and not to exceed a total of 5 days in the period from April 1, 1951, to June 30th, 1952, provided it shall give proper notice to each district.

WORKMEN'S COMPENSATION AND OCCUPATIONAL DISEASES

Each Operator who is a party to this Agreement will provide the protection and coverage of the benefits under

Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any Operator to carry out this direction shall be deemed a violation of this Agreement. Notice of Compliance with this section shall be posted at the mine.

UNITED MINE WORKERS OF AMERICA WELFARE & RETIREMENT FUND OF 1950

A. It is hereby stipulated and agreed by the contracting parties hereto that there is hereby created a Fund to be designated and known as the "United Mine Workers of America Welfare and Retirement Fund of 1950." During the life of this Agreement, there shall be paid into such Fund by each operator signatory hereto the sum of thirty cents (30¢) per ton of two thousand (2,000) pounds on each ton of coal produced for use or for sale. Such Fund shall have its place of business in Washington, District of Columbia, and it shall be operated by a Board of Trustees, one of whom shall be appointed as a representative of the Employers, one of whom shall be appointed as a representative of the United Mine Workers of America and one of whom shall be a neutral party, selected by the other two. In the event of resignation, death, inability or unwillingness to serve of the Trustee appointed by the Operators or the Trustee appointed by the United Mine Workers of America, the Operators shall appoint the successor of the Trustee originally appointed by them and the United Mine Workers of America shall appoint the successor of the Trustee originally appointed by it.

The Operators signatory hereto do hereby appoint Charles A. Owen, of New York City, as their representative on said Board of Trustees. The United Mine Workers

of America do hereby appoint John L. Lewis, of Washin ton, D. C., as its representative on said Board of Trus It is further stipulated and agreed by the joint contracti parties that Josephine Roche, of Denver, Colorado is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Fund herein created.

In the event of a deadlock on the designation or agree ment as to any future neutral Trustee, an impartial umpire shall be selected either by agreement of the two Trustees, representatives of the contracting parties hereto, or by petition by either of the contracting partie hereto to the United States District Court for the Distric of Columbia for the appointment of such an impartial um pire, all as made and provided in Section 302 (c) of the "Labor-Management Relations Act, 1947."

It is agreed by the contracting parties hereto that the Trustees herein provided for shall serve for the duratio of this contract and as long thereafter as the proper con tinuation and administration of said trust shall require.

It is agreed that this Fund is an irrevocable trust created pursuant to Section 302 (c) of the "Labor-Manage Relations Act, 1947,"and shall endure as long as the pur poses for its creation shall exist. Said purposes shall b to make payments from principal or income or both, of (1) benefits to employees of said Operators, their famili and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for in- juries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insuran disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise com- pensated for at all or adequately by tax supported agencie

created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified, provided for or permitted in Section 302 (c) of the "Labor-Management Relations Act, 1947," as agreed upon from time to time by the Trustees including the making of any or all of the foregoing benefits applicable to the individual members of the United Mine Workers of America and their families and dependents, and to employees of the Operators other than those exempted from this Agreement; and (5) benefits for all other related welfare purposes as may be determined by the Trustees within the scope of the provisions of the aforesaid "Labor-Management Relations Act, 1947." Subject to the stated purposes of this Fund, the Trustees shall have full authority, within the terms and provisions of the "Labor-Management Relations Act, 1947," and other applicable law, with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

The aforesaid Trustees shall designate a portion (which may be changed from time to time) of the payments herein provided, based upon proper actuarial computations, as a separate fund to be administered by the said Trustees herein described and to be used for providing for pensions or annuities for the members of the United Mine Workers of America or their families or dependents and such other persons as may be properly included as beneficiaries thereunder.

It is further agreed that the detailed basis upon which payments from the Fund will be made shall be resolved

in writing by the aforesaid Trustees at their initial meeting, or at the earliest practicable date that may by them thereafter be agreed upon.

Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust and that no benefits or moneys payable from this Fund shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void. The moneys to be paid into said Fund shall not constitute or be deemed wages due to the individual mine worker, nor shall said moneys in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, i.e., the beneficiaries of said Trust under the terms of this Agreement.

The obligation to make payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" under this contract shall become effective on March 6, 1950, and the first actual payments are to be made on April 10, 1950, and thereafter continuously on the 10th day of each succeeding calendar month covering the production of all coal for use or sale during the preceding month.

It is stipulated and agreed by the contracting parties hereto that the Trustee designated by the United Mine Workers of America shall be the Chairman of the Trustees of the Fund provided for in this Agreement.

It shall be the duty of the Operators signatory hereto,

and each of them, to keep said payments due said Fund, as hereinabove described and provided for, current and to furnish to the United Mine Workers of America and to the Trustees hereinabove designated a monthly statement showing the full amount due hereunder for all coal produced for use or for sale from each of the several individual mines owned or operated by the said Operators signatory hereto. Payments to said Fund shall be made by check payable to "United Mine Workers of America Welfare and Retirement Fund of 1950" and shall be delivered or mailed to the office of said Fund located at 907 Fifteenth Street, N. W., Washington, D. C., or as otherwise designated by the Trustees.

It is stipulated and agreed by the contracting parties hereto that an annual audit of the Fund hereinabove described shall be made by competent authorities to be designated by the Trustees of said Fund. A statement of the results of such audit shall be made available for inspection of interested persons at the principal office of the Trust Fund and at such other places as may be designated by the Trustees.

Failure of any Operator signatory hereto to make full and prompt payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" in the manner and on the dates herein provided shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement. This obligation of each Operator signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Operator during the life of this Agreement and it shall be deemed a violation of this Agreement if any mine to which this Agreement is applicable shall be sold, leased, sub-leased, assigned, or otherwise disposed

of for the purpose of avoiding the obligation hereunder.

Action which may be required hereunder by the Operators for the appointment of a successor Trustee representing them, or which may be required in connection with any other matter hereunder, may be taken by those Operators who at the time are parties hereto, and authorization, approval, or ratification of Operators representing fifty-one percent (51%) or more of the coal produced for use or sale during the calendar year previous to that in which the action is taken shall be sufficient and shall bind all Operators.

B. It is hereby stipulated and agreed by the contracting parties with respect to the Fund created by the National Bituminous Coal Wage Agreement of 1947:

(1) The Operators signatory hereto agree to make payments into said Fund on or before March 15, 1950, on account of all coal produced for use or sale up to and including March 6, 1950, with respect to which payment has not heretofore been made, such payments to be on the basis heretofore made by said Operators under the National Bituminous Coal Wage Agreement of 1947 and the National Bituminous Coal Wage Agreement of 1948, whichever is applicable.

(2) The Operators signatory hereto hereby renounce and forever release any and all claim to or interest in payments made into the said 1947 fund.

(3) The Trustees appointed pursuant to this Agreement are hereby authorized and directed to accept into the new trust fund hereby created and to devote for the purposes hereinabove specified and enumerated, any and all trust funds remaining unexpended or unobligated in said 1947 trust fund.

(4) The parties hereto agree that the best interest of the beneficiaries of said trust fund would be served by having all unexpended or unobligated funds therein transferred as above provided, and agree that the Trustees thereof should transfer such funds to the new trust fund created by this Agreement.

C. It is stipulated, understood and agreed by the contracting parties hereto that the present practices with respect to wage deductions and their use for provision of medical, hospital and related services shall continue during the terms of this contract or until such earlier date or dates as may be agreed upon by the United Mine Workers of America and any Operator signatory hereto.

D. It is the intent and purpose of the contracting parties hereto that full cooperation shall by each of them be given to each other, the Trustees named under this Section and to all affected Mine Workers to the eventual coordination and development of policies and working agreements necessary or advisable for the effective operation of this Fund.

WAGES AND HOURS

1. (a) For all inside employees a work day of eight hours from portal to portal is established, including a staggered thirty minutes for lunch, and without any intermission or suspension of operation throughout the day. For inside day workers these eight hours shall be paid for at straight time rate. Overtime beyond eight hours per day and forty hours per week shall be paid for at time and one-half with no pyramiding of overtime. Straight time rates for inside day workers shall be the total daily normal shift earnings for eight hours divided by eight (8) hours.

(b) For all outside employees except those covered in paragraph (c) hereof (including all strip mine and coke oven employees), a work day of seven hours and fifteen minutes is established including a staggered thirty minutes for lunch, and without any intermission or suspension of operations throughout the day. These seven hours and fifteen minutes shall be paid for at straight time rate. Overtime beyond seven hours and fifteen minutes per day and thirty six and one-quarter hours per week shall be paid for at time and one-half with no pyramiding of overtime. Straight time earnings for outside day workers covered by this paragraph shall be the total daily normal shift earnings for seven hours and fifteen minutes divided by seven and one-quarter (7.25) hours.

(c) For all outside continuous employees who are engaged at power houses, sub-stations and pumps operating continuously for twenty-four (24) hours daily, and hoisting engineers, a work day of eight hours is established, including a staggered thirty minutes for lunch and without any intermission or suspension of operations throughout the day. These eight hours shall be paid for at straight time rate, Overtime beyond eight hours per day and forty hours per week shall be paid for at time and one-half with no pyramiding of overtime. Straight time earnings for day workers covered by this paragraph shall be the total daily normal shift earnings for eight hours divided by eight (8) hours.

(d) All mine workers, whether employed by the month, day, or tonnage, yardage, deadwork or footage rate, shall receive Four Dollars and Seventy-five Cents ($4.75) per day in addition to that provided for in the contract which expired March 31, 1946.

(e) Work performed on the sixth consecutive day is

optional, but when performed shall be paid for at time and one-half or rate and one-half.

(f) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

(g) Employees paid by the day or by the ton who start to work, that day shall be counted as a day's work in computing the sixth and seventh day in the week provided they do not leave their employment when work is available for them.

(h) Rockdusting shall be done at the expense of the coal operator.

VACATION PAYMENT

An annual vacation period shall be the rule of the industry. From Saturday, July 1, 1950, to Monday, July 10, 1950, inclusive, and from Saturday, June 30, 1951, to Monday, July 9, 1951, inclusive, and from Saturday, June 28, 1952, to Monday, July 7, 1952, inclusive, shall be vacation periods during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1949, to May 31, 1950, and June 1, 1950, to May 31, 1951, and June 1, 1951, to May 31, 1952, respectively) shall receive as compensation for each of the above-mentioned vacation periods the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services prior to

March 31, 1948, and who return to their jobs from the armed services during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this Agreement and payments are to be made in the sum as provided herein.

Pro rata payments for the months they are on the payroll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

The vacation payment for each vacation period shall be made on the last pay day occurring in the month of June of that year.

Failure of any Operator signatory hereto to make full and prompt payments of the amounts required hereby, in the manner and on the dates herein provided, shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement. This obligation of each Operator signatory hereto, which is several and not joint, to so pay such sums, shall be a direct and continuing obligation of said Operator during the life of this Agreement; and it shall be deemed a violation of this Agreement if any mine, to which this Agreement is applicable, shall be sold, leased, sub-leased, assigned, or otherwise disposed of for the purpose of avoiding the obligation hereunder.

CHECKOFF

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, as authorized and approved by

the International Union, United Mine Workers of America, shall be checked off the wages of the employees by the Operators covered by this contract and shall be remitted by the Operators to the properly designated officers of the Mine Workers for distribution to its various branches. Such remittances shall be accompanied by an itemized statement showing the name of each employee and the amount checked off for dues, initiation fees and assessments together with a list of employees from whom dues, initiation fees and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the "Labor-Management Relations Act, 1947" the Mine Workers hereby agree to furnish, with all reasonable dispatch to the respective Operators, and the Operators agree to aid, assist and cooperate in obtaining written assignments from each employee so employed. Upon the presentation to the Operators of such assignments in such reasonable form as time and circumstances, looking to the continuous and uninterrupted production of coal, may allow, said Operators shall make deductions so authorized and deliver the same to the designated District officer of the Mine Workers or to such authorized representative as may be designated by the Mine Workers.

DISTRICT AGREEMENTS

New Districts of the United Mine Workers of America may be established.

This Agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by reference; and all local agreements, rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished. Prior practice and custom not in conflict with this Agreement

may be continued, but any provisions in District or Local Agreements providing for the levying, assessing or collecting of fines or providing for "no strike," "indemnity" or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement. Wherever a conflict arises between this Agreement and any District or Local Agreement, this Agreement shall prevail. When day men are transferred to loading coal the individual affected, if aggrieved, shall have the right of review under the settlement of disputes procedures provided in this Agreement.

No District Contract or Agreement negotiated hereunder shall become effective until approval of such Contract or Agreement by the International Union, United Mine Workers of America, has been first obtained.

SETTLEMENT OF LOCAL AND DISTRICT DISPUTES

Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately:

1. Between the aggrieved party and the mine management.

2. Through the management of the mine and the Mine Committee.

3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement.

HOUSE COAL

House coal shall be sold to all employees, for their own household use, at the cost of production, exclusive of sales and administrative costs. Should any differences arise between the Mine Workers and the Operator of any mine as to the price so to be charged for said coal, such differences shall be settled under the terms of the Settlement of Disputes section of this Agreement.

MISCELLANEOUS

1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, con-

taining any "no strike" or "Penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void.

2. Any and all provisions of any contracts or agreements between the parties hereto or some of them whether National, District, Local or otherwise providing for a protective wage clause and a modification of this Agreement or said agreements if a more favorable wage agreement is entered into by the United Mine Workers of America, are hereby rescinded, cancelled, abrogated and made null and void.

3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry.

4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement.

TERMINATION OF AGREEMENT

This agreement dated March 5, 1950, shall be effective as of March 5, 1950, and shall terminate June 30,

1952, PROVIDED, HOWEVER, That either the "Parties of the First Part" or "Party of the Second Part" may terminate this Agreement on or after April 1, 1951, by giving at least thirty (30) days' written notice to the other party of such desired earlier termination date.

The foregoing termination provision shall not be construed to limit or affect in any way the obligations of the parties relating to the termination of contracts under the "Labor-Management Relations Act, 1947."

NATIONAL CONFERENCES

It is hereby stipulated and agreed by all parties signatory hereto that they, and each of them, will attend any conference or conferences held under the terms of this Agreement and that such conference or conferences shall be convened at Washington, District of Columbia, unless such place of meeting is changed by mutual agreement of the parties.

INTEGRATED INSTRUMENT

This Agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950.

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officers or representatives at Washington, D. C., on this the 5th day of March, A.D., 1950.

Exhibit D-369 - Coal Wage Agreement of 1950

UNITED MINE WORKERS OF AMERICA

By: JOHN L. LEWIS, President
THOMAS KENNEDY, Vice-President
JOHN OWENS, Secretary-Treasurer

District No. 2—By James Mark
District No. 3—By Frank Hughes
District No. 4—By William Hynes
District No. 5—By John Busarello
District No. 6—By Adolph Pacifico
District No. 8—By Thomas Rea
District No. 10—By Sam Nicholls
District No. 11—By Louis Austin
District No. 12—By Hugh White
District No. 13—By Frank D. Wilson
District No. 14—By Henry Allai
District No. 15—By Frank Hefferly
District No. 16—By John T. Jones
District No. 17—By William Blizzar
District No. 19—By Abe Vales
District No. 20—By William Mitch
District No. 21—By David Fowler
District No. 22—By Houston Martin
District No. 23—By Ed J. Morgan
District No. 27—By W. A. Boyle
District No. 28—By W. F. Minton
District No. 29—By George J. Titler
District No. 30—By Sam Caddy
District No. 31—By Cecil J. Urbania

OPERATORS

Arkansas-Oklahoma Coal Operators Association
Central Pennsylvania Coal Producers Association
Eastern Gas & Fuel Associates, Coal Div.
Georges Creek & Upper Potomac Coal Association
Illinois Coal Operators Association
Illinois Coal Strippers Association
Indiana Coal Operators Association
Indiana Coal Producers Association
Montana Coal Operators Association
Mason County Coal Producers Association
Northern Panhandle of West Virginia Coal Operators Association
Northern West Virginia Coal Association
Ohio Coal Association
Retail Coal Producers Association of Greater Johnstown
Somerset County Coal Operators Association
Southern Ohio Coal Operators Association
Southwestern Interstate Coal Operators' Association
Western Kentucky Coal Producers Association
Western Pennsylvania Coal Operators Association
Winding Gulf Operators Association
Virginia Coal Operators Association
Alabama Commercial Coal Operators

Exhibit D-369 - Coal Wage Agreement of 1950

Mary Frances Coal Company
Old La Belle Mine
American Eagle Colliery
Black Mountain Corporation
Coal Processing Corporation
Raleigh Wyoming Mining Company
Truax-Traer Coal Company (W. Va.)
West Virginia Coal & Transportation Co.
The United Electric Coal Companies
Carpentertown Coal & Coke Company
The Coal Service Corporation
Davis Coal & Coke Company
Jewell Ridge Coal Corporation
Johnstown Coal & Coke Co. (Crichton No. 4 Mine, Nicholas Co., W. Va.)
Kelley's Creek Colliery Company
C. H. Mead Coal Company
Pittsburgh Consolidated of Kentucky
The Powhatan Mining Company
The Red Parrot Coal Company
Stonega Coke & Coal
Warner Collieries Company
West Virginia Coal & Coke Corp.
Youghiogheny & Ohio Coal Company
Bear Coal Company
Black Diamond Coal Company
Boulder Valley Coal Company
Calumet Fuel Company
Centennial Coal Company
Champion Coal Mining Company
Clayton Coal Company
Colorado & Utah Coal Company
Colowyo Coal Company
Consolidated Coal & Coke Company
Domestic Coal Company
Edna Coal Company
Farmers Mine
Graden Coal Company
Hayden Coal Company
Huerfano Coal Company
Imperial Coal Company
Kerr Coal Company
Keystone Coal Company
Louisville-LaFayette Coal Company
Moffat Coal Company
Minnequa Coal Company
McNeill Coal Corporation
Pluto Coal Mining Company
W. E. Russell Coal Company
Victor American Fuel Company
St. Louis, Rocky Mountain & Pacific Co.
Big Horn Collieries Co.
Colony Coal Company
Rock Springs Fuel Company
Gunn Quealy Coal Company
Kemmerer Coal Company
Union Pacific Coal Company
Hi-Heat Coal Company
Independent Coal & Coke Company
Kaiser Steel Corporation
Liberty Fuel Company
Lion Coal Corporation
Peerless Coal Company, Inc.
Royal Coal Company
Spring Canyon Coal Company
Standard Coal, Inc.
United States Fuel Company
Utah Fuel Company
Sheridan-Wyoming Coal Company
Russell Fork Coal Co., Inc.
Taylor Coal Mining Company
Jones Motor Sales, Inc.
Southern Coal Producers Association
Big Sandy-Elkhorn Coal Operators Association
Greenbrier Coal Operators Association

Exhibit D-369 - Coal Wage Agreement of 1950

Harlan County Coal Operators Association
Hazard Coal Operators Association
Kanawha Coal Operators Association
Logan Coal Operators Association
New River Coal Operators Association
Operators Association of the Williamson Field
Pocahontas Operators Association
Southern Appalachian Coal Operators Association
Upper Buchanan Smokeless Coal Operators Association
Jacobs Fork Pocahontas Coal Company
Marianna Smokeless Coal Company
New River & Pocohontas Consolidated Coal Company

Steel Captive Group
Armco Steel Corporation
Bethlehem Collieries Corporation
Bethlehem Collieries Corporation (W. Va.)
The Minds Coal Mining Corporation
Monroe Coal Mining Company
The Buckeye Coal Company
Olga Coal Company
The Youngstown Mines Corporation
Consumers Mining Company
Crucible Steel Company of America
H. C. Frick Coke Company
Geneva Steel Company
Inland Steel Company
Jones & Laughlin Steel Corporation
Republic Steel Corporation
Tennessee Coal, Iron & Railroad Co.
Standard Fire Creek Coal Company
United States Coal & Coke Company
Weirton Coal Company
Wheeling Steel Corporation
National Mines Corporation

Exhibit D-369 - Coal Wage Amendment of 1951

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED JANUARY 18th, 1951

EFFECTIVE FEBRUARY 1, 1951

WHEREAS on March 5, 1950, and at various dates subsequent thereto certain coal associations and companies (generally referred to as Operators), in their association and company names and capacities, executed with the United Mine Workers of America the National Bituminous Coal Wage Agreement of 1950 (dated March 5, 1950); and subsequent to becoming signatories to said Agreement many of said signatory operators affiliated with and became members of a newly created Association denominated and known as the "Bituminous Coal Operators' Association" and authorized said Association by and through its President, Harry M. Moses, to officially represent said members, companies and associations in the negotiation of wage agreements with the United Mine Workers of America; and,

WHEREAS said "Bituminous Coal Operators' Association," in behalf of each and all of its members of every kind and character (whether association, company, partnership or individual) has negotiated with the United Mine Workers of America certain amendments to said National Bituminous Coal Wage Agreement of 1950;

NOW, THEREFORE, THIS AGREEMENT made this 18th day of January, 1951, by and between the Bituminous Coal Operators' Association (for and on behalf of each of the named and described associations and companies listed in "Appendix A," hereto attached and made a part hereof) and by and between such other and additional associations, companies and operators as may hereafter

become signatory hereto, hereinafter referred to as "Operators," as parties of the first part, and the International Union, United Mine Workers of America, hereinafter referred to as "Mine Workers," on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, and, as amended, carries forward and preserves the terms and conditions of the National Bituminous Coal Wage Agreement of 1950, such amendments, being as follows, to wit:

WAGES

Amend the "Wages and Hours" section of the National Bituminous Coal Wage Agreement of 1950 by striking out of subsection (d) of said section the words and figures "Four Dollars and Seventy-five Cents ($4.75)" and inserting in lieu thereof the words and figures "Six Dollars and Thirty-five Cents ($6.35)."

TERMINATION OF AGREEMENT

Amend the "Termination of Agreement" section of the National Bituminous Coal Wage Agreement of 1950 by striking out all of the said section below the caption and inserting in lieu thereof the following:

"This Amended Agreement dated January 18th, 1951, shall be effective as of February 1, 1951, and is not subject to termination by any party signatory hereto prior to March 31st, 1952, PROVIDED, HOWEVER, that either the parties of the first part or the party of the second part may, on or after March 31st, 1952, terminate this Agreement by giving at least sixty (60) days written notice to the other party of such desired termination date."

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this Agreement effective as of February 1, 1951 to be signed by its proper officers or representatives at Washington, D.C., on this the 18th day of January, 1951.

UNITED MINE WORKERS OF AMERICA

By: JOHN L. LEWIS, President
THOMAS KENNEDY, Vice-President
JOHN OWENS, Secretary-Treasurer

District No. 2—By James Mark
District No. 3—By Frank Hughes
District No. 4—By W. J. Hynes
District No. 5—By J. P. Busarello
District No. 6—By Adolph Pacifico
District No. 8—By Thomas Rea
District No. 10—By Sam Nicholls
District No. 11—By Roscoe McKinney
District No. 12—By Hugh White
District No. 13—By Frank D. Wilson
District No. 14—By Henry Allai
District No. 15—By Frank Hefferly
District No. 16—By John T. Jones
District No. 17—By William Blizzard
District No. 19—By Abe Vales
District No. 20—By William Mitch
District No. 21—By David Fowler
District No. 22—By Houston Martin
District No. 23—By Ed. J. Morgan
District No. 27—By W. A. Boyle
District No. 28—By W. F. Minton
District No. 29—By George J. Titler
District No. 30—By Sam Caddy
District No. 31—By Cecil J. Urbaniak

OPERATORS

Bituminous Coal Operators Association
Central Pennsylvania Coal Producers Association
Northern Panhandle of West Virginia Coal Operators Association
Northern West Virginia Coal Association
Ohio Coal Association
Virginia Coal Operators Association
Western Pennsylvania Coal Operators Association
Amherst Coal Company
Amigo Smokeless Coal Company
Armco Steel Corporation
Bethlehem Collieries Corporation
Bethlehem Collieries Corporation (W. Va.)

Exhibit D-369 - Coal Wage Amendment of 1951

Bortz Coal Company
The Buckeye Coal Company
Carpentertown Coal & Coke Company
Clinchfield Coal Corporation
Consumers Mining Company
Crucible Steel Company of America
The Davis Coal & Coke Company
Eastern Gas & Fuel Associates
Elk Mountain Coal Company
Gaston Coal Company
Geneva Steel Company
Gulf Smokeless Coal Company
Inland Steel Company
Jones & Laughlin Steel Corporation
Lillybrook Coal Company
Logan County Coal Corporation
Maryland Century Coal Company
C. H. Mead Coal Company
E. C. Minter Coal Company
National Mines Corporation
National Steel Corporation
Olga Coal Company
Ontario Mining Company
Pittsburgh Consolidation Coal Company
The Powhatan Mining Company
The Red Parrot Coal Company
Republic Steel Corporation
Russell Fork Coal Company, Inc.
Scotia Coal and Coke Company
Slab Fork Coal Company
Stonega Coke & Coal Company
Tennessee Coal, Iron & Railroad Co.
United States Steel Company
Weirton Coal Company
West Virginia Coal & Coke Corporation
Wheeling Steel Corporation
The Youngstown Mines Corporation

Southern Coal Producers Association

Big Sandy-Elkhorn Coal Operators Association
Greenbrier Coal Operators Association
Harlan County Coal Operators Association

Exhibit D-369 - Coall Wage Amendment of 1951

Hazard Coal Operators Association
Kanawha Coal Operators Association
Logan Coal Operators Association
New River Coal Operators Association
Operators Association of the Williamson Field
Pocahontas Operators Association
Southern Appalachian Coal Operators Association
Upper Buchanan Smokeless Coal Operators Association
Winding Gulf Operators Association
Alabama Commercial Coal Operators
Blackwood Fuel Company
Buckeye Coal & Coke Company
Crozer Coal & Land Company (Lynco Mine)
Gulf Mining Company
Jacobs Fork Pocahontas Coal Company
MacAlpin Coal Company
Marianna Smokeless Coal Company
New River & Pocahontas Consolidated Coal Company
Oceana Coal Company
Pocahontas Red Bird Coal Company
Raleigh Coal & Coke Company
Red Bird Mining Company
Red Jacket Coal Corporation (Wyoming operation)
Redyard Coal Company
L. J. Signaigo
Sterling Smokeless Coal Company
West Gulf Coal Company
Winding Gulf Collieries Company

Illinois Coal Operators Association
Indiana Coal Operators Association
Indiana Coal Producers Association
Indiana Truck Mine Operators Association
Montana Coal Operators Association
Somerset County Coal Operators Association
Western Kentucky Coal Producers Association
American Eagle Colliery
Black Mountain Corporation
Coal Processing Corporation
Electric Coal Companies, Buffalo Creek Mine
Raleigh Wyoming Mining Company
Union Pacific Coal Company

Exhibit D-369 - Coal Wage Amendment of 1952

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED SEPTEMBER 29, 1952

EFFECTIVE OCTOBER 1, 1952

WHEREAS on January 18, 1951, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended January 18th, 1951"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend, and as amended, carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950" and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT made this 29th day of September, 1952, by and between the coal operators, associations, companies and individuals signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bitumi-

nous Coal Wage Agreement of 1950" and all previous agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

MINE SAFETY PROGRAM

Amend the "MINE SAFETY PROGRAM" section of the Agreement by striking out the language under subsection (d) following the word "injustice" and by striking out the language of subsection (c) and inserting in lieu thereof the following:

"(c) Review and Revision

"In order to carry out the intent and purposes of the agreement affecting the Federal Mine Safety Code it is agreed that representatives of the United Mine Workers of America and the coal operators signatory hereto shall hold joint consultations with the United States Bureau of Mines looking toward review and appropriate revision of the Federal Mine Safety Code. Any revised code that is agreed upon between the aforementioned parties, when adopted by the parties, shall be adopted and incorporated by reference into this Agreement in place of the code adopted and incorporated in the National Bituminous Coal Wage Agreement of 1950 and continued under this Agreement."

Amend the "MINE SAFETY PROGRAM" section of the Agreement by amending subsection (f) to read as follows:

"(f) The International Union, United Mine Workers of America, may designate memorial periods not exceeding a total of ten (10) days during the term of this Agreement, provided it shall give proper notice to each district."

Exhibit D-369 - Coal Wage Amendment of 1952

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950

Amend the first printed paragraph of subsection A by striking out of line four thereof the words and figures "thirty cents (30¢)" and inserting in lieu thereof the words and figures "forty cents (40¢)".

Amend the ninth printed paragraph of subsection A by striking out of line two thereof the words and figures "March 6, 1950", and inserting in lieu thereof the words and figures "October 1st, 1952"; and further amend said paragraph by striking out of line three thereof the words and figures "April 10, 1950" and inserting in lieu thereof the words and figures "November 10th, 1952".

Amend the sixth printed paragraph of subsection A by striking out of line two thereof the words "proper actuarial computations" and inserting in lieu thereof the words "the Trust's statistical experience."

Amend the tenth printed paragraph of subsection A by inserting after the words "shall be" in line two thereof the words "the Chief Executive Officer and".

WAGES

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out of subsection (d) of said section the words and figures "Four Dollars and Seventy-five Cents ($4.75)" and inserting in lieu thereof the words and figures "Eight Dollars and Twenty-five Cents ($8.25)".

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by adding a new section to read as follows:

"(i) It is understood and agreed that Roof Bolters will be paid the same day rates paid to Drillers and Shooters on mechanical crews."

VACATION PAYMENT

Strike out the first and second printed paragraphs and insert in lieu thereof the following:

"An annual vacation period shall be the rule of the industry. From Saturday, June 27, 1953 to Monday, July 6, 1953, inclusive, shall be a vacation period during which coal production shall cease. Daymen required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

"All employees with a record of one year's standing (June 1, 1952 to May 31, 1953) shall receive as compensation for the abovementioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who enter the armed services and those who return from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment."

SENIORITY

1. Seniority in principle and practice shall be recognized in the industry.

2. In all cases where the working force is to be reduced, employees in each job classification at a mine with the least service, shall be laid off first.

3. Employees who are idle because of a reduction in the working force shall be placed in a panel from

which they shall be returned to employment on the basis of seniority.

4. Seniority established by the employees previous to the layoff shall be retained and continued upon reemployment from the panel.

5. The reemployment of any idle person in a new classification is recognized fully, providing such person is qualified and is entitled otherwise to the position by reason of his seniority.

6. The superintendent of the mine and the secretary of the local union shall be joint custodians of the panel record.

7. In two or three shift operations the question of seniority with regard to work on the respective shifts shall be left to the discretion of the contracting parties at the mine in question.

8. Grievances under the seniority arrangements shall be handled in the usual way under the machinery of the contract providing for the consideration and disposition of grievances.

9. Any person in the panel list who secures casual or intermittent employment during the period when no work is available for him at the operation shall in no way jeopardize his seniority rights while engaged in such temporary employment. However, any person on the panel list who secures regular employment at another operation, or outside the industry, and does not return to work when there is available employment at the mine for those in said panel, shall sacrifice his seniority rights at the operation and shall have his name removed from the panel list.

Exhibit D-369 - Coal Wage Amendment of 1952

APPLICATION OF CONTRACT TO COAL LANDS

As a part of the consideration for this Agreement, the Operators signatory hereto agree that this Agreement covers the operation of all of the coal lands owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its term which may hereafter (during the term of this agreement) be put into production. The said Operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this Agreement.

HOUSE COAL

House coal shall be sold to all employees (including retired employees) of the mine, who live within a reasonable distance of the mine, for their own household use, at the cost of production, exclusive of sales and administrative costs. Should any differences arise between the Mine Workers and the Operator of any mine as to the price so to be charged for said coal, such differences shall be settled under the terms of the Settlement of Disputes section of this Agreement.

MISCELLANEOUS

Amend "Miscellaneous" by striking out subsection 4 and amending subsection 3 to read as follows:

"3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement unless

national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

Amend "Miscellaneous" by adding thereto the following, to become subsection 4:

"4. Each operator signatory or who may become signatory hereto hereafter agrees to give proper notice to the President of the local union at the mine by the 18th day of each month that said Operator has made the required payment to the United Mine Workers of America Welfare and Retirement Fund for the previous month."

TERMINATION OF AGREEMENT

Amend the "TERMINATION OF AGREEMENT" section of the National Bituminous Coal Wage Agreement of 1950 by striking out all of the said section below the caption and inserting in lieu thereof the following:

"This Amended Agreement dated September 29, 1952, shall be effective as of October 1, 1952, and is not subject to termination by any party signatory hereto prior to September 30, 1953, PROVIDED, HOWEVER, That either the parties of the first part or the party of the second part may, on or after September 30, 1953, terminate this Agreement by giving at least sixty (60) days' written notice to the other party of such desired termination date."

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this Agreement effective October 1, 1952, to be signed by its proper officers or representatives at Washington, D.C., on this 29th day of September, 1952.

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President
THOMAS KENNEDY, Vice-President
JOHN OWENS, Secretary-Treasurer

District No. 2-James Mark
District No. 3-Frank Hughes
District No. 4-W. J. Hynes
District No. 5-J. P. Busarello
District No. 6-Adolph Pacifico
District No. 8-Thomas Rea
District No. 10-Sam Nicholls
District No. 11-Roscoe McKinney
District No. 12-Hugh White
District No. 13-Frank D. Wilson
District No. 14-Henry Allai
District No. 15-Frank Hefferly
District No. 16-John T. Jones
District No. 17-William Blizzard
District No. 19-Ray Thomason
District No. 20-William Mitch
District No. 21-David Fowler
District No. 22-J. E. Brinley
District No. 23-Ed. J. Morgan
District No. 27-W. A. Boyle
District No. 28-Allen Condra
District No. 29-George J. Titler
District No. 30-Sam Caddy
District No. 31-Cecil J. Urbaniak

OPERATORS

Bituminous Coal Operators Association
Central Pennsylvania Coal Producers Association
Northern Panhandle of West Virginia Coal Operators Association
Northern West Virginia Coal Association
Ohio Coal Association
Virginia Coal Operators Association
Western Pennsylvania Coal Operators Association
Amherst Coal Company
Amigo Smokeless Coal Company
Armco Steel Corporation
Bethlehem Mines Corporation
Bortz Coal Company

Exhibit D-369 - Coal Wage Amendment of 1952

Buckeye Coal Company
Carpentertown Coal & Coke Company
Clinchfield Coal Corporation
Consumers Mining Company
Crucible Steel Company of America
Eastern Gas & Fuel Associates
Elk Mountain Coal Company
Gaston Coal Company
Gulf Smokeless Coal Company
Harmar Coal Company
Indian Coal Company
Inland Steel Company
Jewell Ridge Coal Corporation
Jones & Laughlin Steel Corporation
Lillybrook Coal Company
Mathies Coal Company
E. C. Minter Coal Company
North American Coal and Dock Company
Olga Coal Company
Ontario Mining Company
Pittsburgh Consolidation Coal Company
Powhatan Mining Company
Renton Coal Company
Republic Steel Corporation
Russell Fork Coal Company, Incorporated
Scotia Coal and Coke Company
Slab Fork Coal Company
Standard Fire Creek Coal Company
Stonega Coke & Coal Company
United States Steel Company
Weirton Coal Company
Weirton Steel Company Division, National Steel Corporation
West Virginia Coal & Coke Corporation
Wheeling Steel Corporation
Youngstown Mines Corporation

Southern Coal Producers Association
Big Sandy-Elkhorn Coal Operators Association
Greenbrier Coal Operators Association
Harlan County Coal Operators Association
Hazard Coal Operators Association
Kanawha Coal Operators Association

Exhibit D-369 - Coal Wage Amendment of 1952

Logan Coal Operators Association
New River Coal Operators Association
Pocahontas Operators Association
Southern Appalachian Coal Operators Association
Upper Buchanan Smokeless Coal Operators Association
Operators Association of the Williamson Field
Blackwood Fuel Company
Buckeye Coal & Coke Company
Crozer Coal & Land Company (Lynco Mine)
Gulf Mining Company
Island Creek Coal Company (Mines 24, 25 and 26)
Jacobs Fork Pocahontas Coal Company
MacAlpin Coal Company
New River & Pocahontas Consolidated Coal Company
Oceana Coal Company
Pocahontas Red Bird Coal Company
Red Bird Mining Company
Red Jacket Coal Corporation (Coal Mountain Mine)
Red Jacket Coal Corporation (Wyoming operation)
Redyard Coal Company
Sterling Smokeless Coal Company
West Gulf Coal Company
Winding Gulf Collieries Company

Alabama Commercial Coal Operators Association
Indiana Coal Operators Association
Indiana Truck Mine Operators Association
Retail Coal Producers Association of Greater Johnstown
Somerset County Coal Operators Association
Southern Tennessee Coal Producers Association
Western Kentucky Coal Producers Association
Bellemead Coal Company
Jones Motor Sales, Inc.
Wood Pocahontas Mining Company

Exhibit D-369 - Coal Wage Amendment of 1955

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE SEPTEMBER 1, 1955

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective September 1, 1955, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended,

modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of subsection (d) of said section and substituting the following:

"(d) All mine workers, whether employed by the month, day, or tonnage, yardage, deadwork or footage rate, shall receive, effective September 1, 1955, Nine Dollars and Forty-five Cents ($9.45) per day in addition to that provided for in the contract which expired March 31, 1946, and effective April 1, 1956, Ten Dollars and Twenty-five Cents ($10.25) per day in addition to that provided for in the contract which expired March 31, 1946."

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by adding a new subsection to read as follows:

"(j) Work performed on Saturday shall be paid for at time and one-half or rate and one-half. Work performed on Sunday shall be paid for at double time or at double rates. The operator shall have the right to schedule maintenance crews, power house and sub-station employees, pumpers, lamp house and bath house men, firemen, fan attendants, switchboard operators and other similar employees for Saturday and Sunday work and

schedule their days off during the first five days of the work week (except continuous hoisting engineers as now provided in subsection (c) hereof). However, such employees shall be given the opportunity to work the same number of days per week as the number of days on which the mine produces coal, and shall be given equal opportunity to share the available work on premium days."

VACATION PAYMENT

Strike out the first and second printed paragraphs and insert in lieu thereof the following:

"An annual vacation period of twelve (12) consecutive calendar days shall be the rule of the industry. From Thursday, June 28, 1956 to Monday, July 9, 1956, inclusive, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

"All employees with a record of one year's standing (June 1, 1955 to May 31, 1956) shall receive as compensation for the above mentioned vacation period the sum of One Hundred Forty Dollars ($140), with the following exception: Employees who enter the armed services and those who return from the armed services to their jobs during the qualifying period shall receive the $140 vacation payment."

TERMINATION OF AGREEMENT

Amend the "TERMINATION OF AGREEMENT" section of the National Bituminous Coal Wage Agreement of 1950

by striking out the present language and inserting in lieu thereof the following:

"This Amended Agreement, dated August 20, 1955, shall be effective as of September 1, 1955, and is not subject to termination by any party signatory hereto prior to August 30, 1956, PROVIDED, HOWEVER, That either the parties of the first part or the party of the second part may, on or after August 31, 1956, terminate this Agreement by giving at least sixty (60) days' written notice to the other party of such desired termination date."

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this Agreement, effective September 1, 1955, to be signed by its proper officers or representatives at Washington, D.C., on this 20th day of August, 1955.

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this agreement, effective September 1, 1955, to be signed by its proper officers or representatives at Washington, D.C., on this 20th day of August, 1955.

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President
THOMAS KENNEDY, Vice-President
JOHN OWENS, Secretary-Treasurer

District No. 2-John Ghizzoni	District No. 11-Robert Anderson
District No. 3-Frank Hughes	District No. 12-Hugh White
District No. 4-W. J. Hynes	District No. 13-Frank D. Wilson
District No. 5-J. P. Busarello	District No. 14-Henry Allai
District No. 6-Adolph Pacifico	District No. 15-Frank Hefferly
District No. 8-James J. Miller	District No. 16-John L. Mayo
District No. 10-Sam Nicholls	District No. 17-R. O. Lewis

Exhibit D-369 - Coal Wage Amendment of 1955

District No. 19-Ray Thomason
District No. 20-William Mitch
District No. 21-David Fowler
District No. 22-J. E. Brinley
District No. 23-Ed. J. Morgan
District No. 27-R. J. Boyle
District No. 28-Carson Hibbitts
District No. 29-George J. Titler
District No. 30-Sam Caddy
District No. 31-C. J. Urbaniak

OPERATORS

Bituminous Coal Operators Association

Central Pennsylvania Coal Producers Association
Northern Panhandle of West Virginia Coal Operators Association
Northern West Virginia Coal Association
Ohio Coal Association
Virginia Coal Operators Association
Western Pennsylvania Coal Operators Association
Amherst Coal Company
Amigo Smokeless Coal Company
Armco Steel Corporation
Berwind-White Coal Company
Bethlehem Mines Corporation
Bortz Coal Company
The Buckeye Coal Company
Carpentertown Coal & Coke Company
Clinchfield Coal Corporation
Crucible Steel Company of America
Eastern Gas & Fuel Associates
Fourseam Coal Corporation
Gay Mining Company
Greensburg-Connellsville Coal & Coke Company
Gulf Smokeless Coal Company
Harmar Coal Company
Inland Steel Company
Jewell Ridge Coal Corporation-Blair Fork Mine
Jewell Ridge No. 1 Mine, Jewell Ridge No. 2 Mine, Jewell Ridge No. 3 Mine
Jones & Laughlin Steel Corporation
Lillybrook Coal Company
Mather Collieries
Mathies Coal Company
The North American Coal & Dock Co.
Olga Coal Company
Omar Mining Company

Exhibit D-369 - Coal Wage Amendment of 1955

Ontario Mining Company
Paradise Collieries, Inc.
Pittsburgh Consolidation Coal Company
The Powhatan Mining Company
Renton Coal Company
Republic Steel Corporation
Rochester & Pittsburgh Coal Company
Russell Fork Coal Company, Inc.
Slab Fork Coal Company
Stewart Coal & Coke Company
Stonega Coke & Coal Company
United States Steel Corporation
Weirton Coal Company
Weirton Steel Company Division, National Steel Corporation
Westmoreland Coal Company
The Youngstown Mines Corporation

Southern Coal Producers Association
Big Sandy-Elkhorn Coal Operators Association
Greenbrier Coal Operators Association
Harlan County Coal Operators Association
Hazard Coal Operators Association
Kanawha Coal Operators Association
Logan Coal Operators Association
Pocahontas Operators Association
Tug River Coal Operators Association
Southern Appalachian Coal Operators Association
Operators Association of Williamson Field
Upper Buchanan Coal Operators Association
Ames Mining Company
Blackwood Fuel Company
Buckeye Coal & Coke Company
Crozer Coal & Land Company
Gulf Mining Company
Island Creek Coal Company
Jacob Fork Pocohontas Coal Company
New River Company
New River & Pocahontas Consolidated Coal Company
Oceana Coal Company
Redyard Coal Company
Pocahontas Red Bird Coal Company

Exhibit D-369 - Coal Wage Amendment of 1955

Winding Gulf Collieries Company
MacAlpin Coal Company
Sterling Smokeless Coal Company
Royalty Smokeless Coal Company
Red Jacket Coal Corporation

Alabama Commercial Coal Operators Association
Illinois Coal Operators Association
Indiana Coal Operators Association
Indiana Coal Producers Association
Retail Coal Producers Association of Greater Johnstown
Somerset County Coal Operators Association
Southern Tennessee Coal Producers Association
West Kentucky Coal Producers Association
Old Ben Coal Corporation
Raleigh-Wyoming Mining Company
Coal Processing Corporation
West Kentucky Coal Company
Peabody Coal Company

Exhibit D-369 - Coal Wage Amendment of 1956

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE OCTOBER 1, 1956

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29, 1952," said "National Bituminous Coal Wage Agreement of 1950," and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective October 1, 1956, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties,

amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29, 1952," the "National Bituminous Coal Wage Agreement of 1950," and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of subsection (d) of said section and substituting the following:

"(d) All mine workers, whether employed by the month, day, or tonnage, yardage, deadwork or footage rate, shall receive, effective October 1, 1956, Eleven Dollars and Forty-Five Cents ($11.45) per day in addition to that provided for in the contract which expired March 31, 1946, and effective April 1, 1957, Twelve Dollars and Twenty-Five Cents ($12.25) per day in addition to that provided for in the contract which expired March 31, 1946."

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of subsection (f) of said section and substituting the following:

"(f) Holidays, when worked, shall be paid for at double time or double rates."

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by adding a new subsection to read as follows:

"(j) Work performed on Saturday shall be paid for at time and one-half or rate and one-half. Work performed on Sunday shall be paid for at double time or at double rates. The operator shall have the right to schedule maintenance crews, power house and sub-station employees, pumpers, lamp house and bath house men, firemen, fan attendants, switchboard operators and other similar employees for Saturday and Sunday work and schedule their days off during the first five days of the work week (except continuous hoisting engineers as now provided in subsection (c) hereof). However, such employees shall be given the opportunity to work the same number of days per week as the number of days on which the mine produces coal, and shall be given equal opportunity to share the available work on premium days."

VACATION PAYMENT

Amend the "VACATION PAYMENT" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of the first and second paragraphs of said section and substituting the following:

"An annual vacation of fourteen (14) calendar days shall be the rule of the industry. From Friday, June 28, 1957, to Monday, July 8, 1957, inclusive, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

"All employees with a record of one year's standing (June 1, 1956, to May 31, 1957) shall receive as compensation for the above mentioned vacation period the sum of One Hundred Eighty Dollars ($180), with the fol-

lowing exception: Employees who enter the armed services and those who return from the armed services to their jobs during the qualifying period shall receive the $180 vacation payment. In addition, December 24, December 26, and December 31, 1956 shall be vacation days during which coal production shall cease. Day men required to work during these days at coke plants and other necessarily continuous operations or on emergency or repair work shall have equivalent vacation days at other agreed periods. All employees with a record of one year's standing (June 1, 1955 to May 31, 1956) shall receive as compensation for such vacation days the sum of Forty Dollars ($40) with the following exception: Employees who enter the armed services and those who return from the armed services to their jobs during the qualifying period shall receive the $40 vacation payment. This vacation payment shall be made on the last pay day occurring before Christmas Day."

TERMINATION OF AGREEMENT

Amend the"TERMINATION OF AGREEMENT" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language and inserting in lieu thereof the following:

"This Amended Agreement, dated October ....., 1956, shall be effective as of October 1, 1956, and is not subject to termination by any party signatory hereto prior to September 30, 1957, PROVIDED, HOWEVER, That either the parties of the first part or the party of the second part may terminate this Agreement on or after September 30, 1957 by giving at least sixty (60) days' written notice to the other party of such desired termination date."

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this Agreement, effective October 1, 1956, to be signed by its proper officers or representatives at Cincinnati, Ohio, on this ..... day of October, 1956.

UNITED MINE WORKERS OF AMERICA

OPERATORS

Exhibit D-369 - Coal Wage Amendment of 1958

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1950 AS AMENDED EFFECTIVE DECEMBER 1, 1958

WHEREAS on September 29, 1952, and at various dates subsequent thereto, certain coal associations, companies and individuals (generally referred to as "Operators"), in their association, company and individual names and capacities, executed with the United Mine Workers of America an Agreement denominated "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952"; and said Operators, signatory to this Agreement, have now negotiated with the United Mine Workers of America certain additional amendments to said "National Bituminous Coal Wage Agreement of 1950" and it is the agreement and intent of all parties hereto to amend and supplement and as amended and supplemented to carry forward and preserve the terms and conditions of said "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", said "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided:

NOW, THEREFORE, THIS AGREEMENT, effective December 1, 1958, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and

supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

WAGES AND HOURS

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of subsection (d) of said section and substituting the following:

"(d) All mine workers, whether employed by the month, day, or tonnage, yardage, deadwork or footage rate, shall receive, effective January 1, 1959, Thirteen Dollars and Forty-Five Cents ($13.45) per day in addition to that provided for in the contract which expired March 31, 1946, and effective April 1, 1959, Fourteen Dollars and Twenty-Five Cents ($14.25) per day in addition to that provided for in the contract which expired March 31, 1946."

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of subsection (f) of said section and substituting the following:

"(f) Holidays, when worked, shall be paid for at double time or double rates."

Amend the "WAGES AND HOURS" section of the National Bituminous Coal Wage Agreement of 1950 by adding a new subsection to read as follows:

"(j) Work performed on Saturday shall be paid for at time and one-half or rate and one-half. Work performed on Sunday shall be paid for at double time or double rates. The operator shall have the right to schedule maintenance crews, power house and sub-station employees, pumpers, lamp house and bath house men, firemen, fan attendants, switchboard operators and other similar employees for Saturday and Sunday work and schedule their days off during the first five days of the work week (except continuous hoisting engineers as now provided in subsection (c) hereof). However, such employees shall be given the opportunity to work the same number of days per week as the number of days on which the mine produces coal, and shall be given equal opportunity to share the available work on premium days."

PROTECTIVE WAGE CLAUSE

The United Mine Workers of America (which, as used in this Clause, includes all of its Districts, Local Unions, Officers or Agents) and the Operators signatory hereto affirm their intention to maintain the integrity of this contract in all of its parts. The objective of this contract is to provide the maximum possible continuity and stability of employment under the conditions set forth herein. The parties hereto agree that bituminous coal mines shall be so operated as not to debase or lower the standards of wages, hours, safety requirements and other conditions of work, established by this contract. The parties recognizing their obligation each as to the other to exercise all possible efforts and means to attain these objectives further agree as follows:

A. During the period of this Contract, the United Mine Workers of America will not enter into, be a

party to, nor will it permit any agreement or understanding covering any wages, hours or other conditions of work applicable to employees covered by this Contract on any basis other than those specified in this Contract or any applicable District Contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this Contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all the parties signatory thereto.

B. It is recognized that when signatory operators mine, prepare, or procure or acquire under subcontract arrangements, bituminous coal mined under terms and conditions less favorable than those provided for in this contract, they deprive employees of employment opportunities, employment conditions and other benefits which these employees are entitled to have safeguarded, stabilized and protected. Accordingly, the Operators agree that all bituminous coal mined, produced, or prepared by them, or any of them, or procured or acquired by them or any of them under a subcontract arrangement, shall be or shall have been mined or produced under terms and conditions which are as favorable to the employees as those provided for in this Contract.

"Procured or acquired under a subcontract arrangement" means any contract, lease, license, agreement, arrangement or understanding pursuant to which the signatory operator acquires coal, either as principal or agent, directly or indirectly from a producer other than such signatory for delivery to a person other than such signatory.

The obligation assumed hereunder shall not affect any agreement in effect as of the date of execution of this contract: Provided, however, that any operator signatory hereto who is a party to any agreement inconsistent with the obligations assumed hereunder shall not maintain such inconsistent agreement in effect beyond the first date at which such agreement may be terminated by him in accordance with its terms.

The Operators signatory to this agreement shall so conduct their own operations (whether operated directly or indirectly, or through subsidiaries or affiliates) so as to fully comply with their obligations under this Clause. The obligation of each Operator signatory hereto, which is several and not joint, to fully perform all the conditions in this paragraph B contained, shall be a direct and continuing obligation of said Operator during the life of this Agreement.

As a part of the consideration for this Agreement, the Operators signatory hereto agree that this Clause covers the operation of all the coal lands, coal producing or coal preparation facilities owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its term which may hereafter (during the term of this Agreement) be put into production or use. The said Operators agree that they will not lease, license, or contract out any coal lands, coal producing or coal preparation facilities as a subterfuge for the purpose of avoiding the application of this Clause.

C. There is hereby established a Joint Industry Contract Committee composed of six (6) members, three (3) of whom shall be appointed and may be re-

moved by the Union and three (3) of whom shall be appointed and may be removed by the Operators. Such appointments shall be made and notice thereof given to the proper parties hereto as expeditiously as possible and not later than thirty (30) days after the date of the execution of this Contract. In the event of resignation, removal, death, inability or unwillingness to serve of any of the members of the Committee, the Union shall appoint the successor or successors of the members originally appointed by it and the Operators shall appoint the successor or successors of the members originally appointed by them. Action which may be required of the Operators for the appointment of any member of the Joint Industry Contract Committee representing them may be taken by those Operators who, at the time, are signatories hereto. Authorization, approval or ratification of Operators representing fifty-one (51) per cent or more of the coal produced for use or sale during the calendar year previous to that in which such action is taken shall be sufficient to bind all Operators.

The Joint Industry Contract Committee may appoint such Joint District Contract Committees in such districts or groups of districts as it may determine, such district committees to consist of such numbers of members, half of whom shall represent the Union and half of whom shall represent the Operators in that district or groups of districts, as the Industry Committee shall deem advisable. The Joint District Contract Committees shall assist the Joint Industry Contract Committee in making any investigations hereunder.

The Joint Industry Contract Committee and the Joint District Committees, when authorized by and under

the supervision of the Industry Committee, may employ such clerical and other employees as are required for the performance of their duties hereunder. Expenses of all Committees shall be borne equally by the Union and the Operators.

D. Within one hundred and twenty days after the execution of this contract and each six months thereafter each Operator signatory hereto shall certify in writing to the Joint District Contract Committee for the District where he maintains his principal place of business where such a District Committee exists, or to the Joint Industry Contract Committee where no District Committee exists, that he is in full compliance with all the terms and conditions of this contract or any applicable District Agreement. Within one hundred and twenty days after the execution of this Agreement, and each six months thereafter each Union District President shall certify in writing to his Joint District Contract Committee, if one exists, or, if none exists, to the Joint Industry Contract Committee, a complete list of all Operators and Mines engaged in the production of bituminous coal within his district whose operations are under contract with the Union. No operator may be found to be in violation of this Protective Wage Clause with respect to any coal produced by another operator who is listed on the Contract list to be furnished by United Mine Workers of America under this paragraph, unless and until such operator is notified in writing by the Joint Industry Contract Committee that such operator has failed to comply with the provisions of this Clause and such failure has not been corrected.

E. Any party signatory to this contract shall have

the right at any time to file a complaint with the Joint Industry Contract Committee alleging a violation of any provision of this Protective Wage Clause. In the event such a charge is filed it shall be the duty of the Joint Industry Contract Committee to investigate and determine the facts with respect to such alleged violation. Any determination by the Joint Industry Committee that a violation of this Clause has occurred may be made only upon the concurrence therein of a majority of the membership of the Committee. Notice by the Committee to the affected party, opportunity for the party to be heard, and failure promptly to effect full compliance after a finding of violation by the Committee shall be deemed a condition precedent to any final determination that a violation of this Clause has occurred. Findings made by the Joint Committee, after notice and opportunity for hearing, shall be served upon all parties to the proceeding, and shall constitute a final determination as to the fact of a violation. Failure or refusal of United Mine Workers or any Operator signatory hereto to comply with a final determination by the Committee of a violation of Paragraphs (A) or (B) of this Clause may be deemed a violation of this Agreement.

The Mine Workers agree to make available to the Joint Industry Contract Committee all contracts, agreements, or understandings entered into by the Mine Workers with any person engaged in the production of bituminous coal, and further agree to appear before the Committee on request by it and inform the Committee on such other related and pertinent matters as shall be essential to the Committee's investigation of an alleged violation of this Protective Wage Clause. Each Operator signatory hereto agrees to appear

before the Committee on request by it and inform the Committee as to the source and quantity of coal produced or purchased or otherwise acquired, payment of wages to, and hours and working conditions of classified employees, payments to the United Mine Workers of America Welfare and Retirement Fund, and such other related and pertinent matters as shall be essential to the Committee's investigation of an alleged violation of this Protective Wage Clause.

The authority of the Committee is restricted to the subject matter covered in this Protective Wage Clause and shall not extend to disputes concerning the administration of the Contract which are of the type that have heretofore been processed under the grievance procedures provided for in the Section of the Contract entitled "Settlement of Local and District Disputes"; nor shall the provisions of this "Protective Wage Clause" be subject to the terms or conditions of the "Settlement of Local and District Disputes" section of this Contract.

VACATION PAYMENT

Amend the "VACATION PAYMENT" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language of the first and second paragraphs of said section and substituting the following:

"An annual vacation of fourteen (14) calendar days shall be the rule of the industry. Beginning at the start of the morning shift on Saturday, June 27, 1959, and ending at the beginning of the morning shift on Saturday, July 11, 1959, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily

continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

"All employees with a record of one year's standing (June 1, 1958, to May 31, 1959) shall receive as compensation for the above mentioned vacation period the sum of Two Hundred Dollars ($200), with the following exception: Employees who enter the armed services and those who return from the armed services to their jobs during the qualifying period shall receive the $200 vacation payment."

TERMINATION OF AGREEMENT

Amend the "TERMINATION OF AGREEMENT" section of the National Bituminous Coal Wage Agreement of 1950 by striking out the present language and inserting in lieu thereof the following:

"This Amended Agreement, dated December 3rd, 1958, shall be effective as of December 1, 1958, and is not subject to termination by any party signatory hereto prior to November 30, 1959, PROVIDED, HOWEVER, That either the parties of the first part or the party of the second part may terminate this Agreement on or after November 30, 1959, by giving at least sixty (60) days' written notice to the other party of such desired termination date."

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this Agreement, effective December 1, 1958, to be signed by its proper officers or representatives at Washington, District of Columbia, on this 3rd day of December, 1958.

Exhibit D-369 - Coal Wage Amendment of 1958

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President
THOMAS KENNEDY, Vice-President
JOHN OWENS, Secretary-Treasurer

District No. 2-John Ghizzoni	District No. 16-John L. Mayo
District No. 3-Ewing Watt	District No. 17-R. O. Lewis
District No. 4-W. J. Hynes	District No. 19-J. W. Ridings
District No. 5-Joseph Yablonski	District No. 20-William Mitch
District No. 6-Adolph Pacifico	District No. 21-David Fowler
District No. 8-Elias Dayhuff	District No. 22-Harry Mangus
District No. 10-Sam Nicholls	District No. 23-Ed. J. Morgan
District No. 11-Ernest Goad	District No. 27-R. J. Boyle
District No. 12-Hugh White	District No. 28-Carson Hibbitts
District No. 13-Frank D. Wilson	District No. 29-George J. Titler
District No. 14-Henry Allai	District No. 30-Sam Caddy
District No. 15-Frank Hefferly	District No. 31-C. J. Urbaniak

OPERATORS

Bituminous Coal Operators' Association

Central Pennsylvania Coal Producers' Association
Northern Panhandle of West Virginia Coal Operators' Association
Northern West Virginia Coal Association
Ohio Coal Association
Western Pennsylvania Coal Operators' Association

Amherst Coal Company
Amigo Smokeless Coal Company
The Berwind-White Coal Mining Company
Bortz Coal Company
Clinchfield Coal Company, Division of the Pittston Company
Consolidation Coal Company
Eastern Gas & Fuel Associates
Greensburg-Conellsville Coal & Coke Company
Jewell Ridge Coal Corporation
Lillybrook Coal Company
Massey Coal Mining Company
The North American Coal & Dock Company

Exhibit D-369 - Coal Wage Amendment of 1958

Omar Mining Company
The Powhatan Mining Company
Rochester & Pittsburgh Coal Company
Russell Fork Coal Company, Inc.
Slab Ford Coal Company
Stewart Coal & Coke Company
Stonega Coke & Coal Company
Westmoreland Coal Company
Winding Gulf Coals, Inc.

Southern Coal Producers' Association
Big Sandy-Elkhorn Coal Operators' Association
Greenbrier Coal Operators' Association
Hazard Coal Operators' Association
Kanawha Coal Operators' Association
Logan Coal Operators' Association
Pocahontas Operators' Association
Southern Appalachian Coal Operators' Association
Operators' Association of Williamson Field
Upper Buchanan Coal Operators' Association

Crozer Coal & Land Company
Island Creek Coal Company
Jacobs Fork Pocahontas Coal Company
Nassau Coal Company
New River Company
New River & Pocahontas Consolidated Coal Company
Page Coal and Coke Company
Red Bird Mining Company
Royalty Smokeless Coal Company
Sterling Smokeless Coal Company
Winding Gulf Coals, Inc.

Alabama Commercial Coal Operators' Association
Arkansas-Oklahoma Coal Operators' Association
Illinois Coal Operators' Association
Indiana Coal Operators' Association
Indiana Coal Producers' Association
Retail Coal Producers' Association of Greater Johnstown
Somerset County Coal Operators' Association
Southern Tennessee Coal Producers' Association
Southwestern Interstate Coal Operators Association
Western Kentucky Coal Producers' Association

TABLE 1. UNITED STATES CONSUMPTION OF ENERGY FUELS AND WATERPOWER IN PERCENT OF B.T.U.'s, 1940-1964[1]

(Data plotted on Chart 1.)

Year	Bituminous Coal and Lignite	Anthracite	Crude Oil and net Petroleum Products Imported	Natural Gas and Natural Gas Liquids	Water Power	Nuclear Power	Total
1940 ----	47.2	5.2	31.4	12.4	3.8		100.0
1941 ----	48.4	5.0	30.8	12.1	3.7		100.0
1942 ----	50.7	5.2	27.5	12.4	4.2		100.0
1943 ----	51.1	4.8	27.1	12.6	4.4		100.0
1944 ----	48.5	4.7	29.1	13.3	4.4		100.0
1945 ----	46.5	4.2	30.5	14.1	4.7		100.0
1946 ----	43.0	4.5	32.8	15.0	4.7		100.0
1947 ----	43.5	3.7	32.9	15.5	4.4		100.0
1948 ----	40.1	3.8	35.1	16.6	4.4		100.0
1949 ----	36.9	3.0	36.3	18.8	5.0		100.0
1950 ----	34.8	3.0	37.2	20.3	4.7		100.0
1951 ----	33.3	2.5	37.9	22.0	4.3		100.0

EXHIBIT D-395

Exhibit D-395 (Continued)

1952 ----	30.0	2.4	39.4	23.8	4.4		100.0
1953 ----	29.7	1.9	40.0	24.3	4.1		100.0
1954 ----	26.2	1.9	41.5	26.3	4.1		100.0
1955 ----	27.8	1.5	40.8	26.1	3.8		100.0
1956 ----	27.0	1.4	41.5	26.3	3.8		100.0
1957 ----	25.8	1.3	41.4	27.8	3.7		100.0
1958 ----	23.1	1.2	42.0	29.5	4.2		100.0
1959 ----	22.1	1.1	42.2	30.7	3.9		100.0
1960 ----	22.2	1.0	41.6	31.6	3.6		100.0
1961 ----	21.5	0.9	41.6	32.3	3.6	0.1	100.0
1962 ----	21.3	0.8	41.2	32.9	3.7	0.1	100.0
1963 ----	21.7	0.7	40.8	33.2	3.5	0.1	100.0
1964 ----	21.8	0.7	40.3	33.5	3.6	0.1	100.0

[1] Source: U. S. Bureau of Mines 1964 "Minerals Yearbook," Volume II, "Fuels."

Exhibit D-395 (Continued)

TABLE 4. UNITED STATES TOTAL PRODUCTION OF BITUMINOUS COAL IN PERCENT, BY SIZE OF ANNUAL OUTPUT, 1940-1964 1/

(Data plotted on Chart 4.)

Year	CLASS 1 500,000 tons and over	CLASS 2 200,000 to 500,000 tons	CLASS 3 100,000 to 200,000 tons	CLASS 4 50,000 to 100,000 tons	CLASS 5 10,000 to 50,000 tons	CLASS 6 Less than 10,000 tons	TOTAL
1940 ---	45.7	26.6	13.4	5.8	5.8	2.7	100
1941 ---	45.3	28.1	12.5	5.7	5.8	2.6	100
1942 ---	48.2	26.4	12.0	5.5	5.7	2.2	100
1943 ---	47.1	27.9	11.1	5.8	6.0	2.1	100
1944 ---	45.6	26.6	13.0	6.1	6.7	2.0	100
1945 ---	42.3	25.5	14.6	7.6	7.8	2.2	100
1946 ---	38.2	27.0	14.8	8.6	8.8	2.6	100
1947 ---	41.5	24.6	14.0	8.0	9.4	2.5	100
1948 ---	38.0	25.6	13.8	9.1	10.2	3.3	100
1949 ---	29.3	27.3	16.1	10.9	11.4	5.0	100
1950 ---	35.9	27.1	14.0	8.6	10.2	4.2	100
1951 ---	42.4	25.4	12.2	8.0	8.8	3.2	100
1952 ---	40.5	26.2	12.9	8.1	9.0	3.3	100
1953 ---	44.4	26.4	10.9	7.2	8.0	3.1	100

1954 ---	44.1	25.3	10.5	7.5	9.1	3.5	100
1955 ---	47.4	22.5	10.1	7.2	8.7	4.1	100
1956 ---	48.6	20.8	10.2	6.8	9.3	4.3	100
1957 ---	48.5	21.3	9.0	6.7	10.5	4.0	100
1958 ---	45.7	21.2	10.1	6.9	11.4	4.7	100
1959 ---	49.9	19.2	9.0	6.6	10.4	4.9	100
1960 ---	49.3	19.5	9.0	6.7	10.6	4.9	100
1961 ---	50.4	18.1	8.4	7.5	11.3	4.3	100
1962 ---	50.6	18.1	8.5	6.8	11.5	4.5	100
1963 ---	52.9	16.8	7.8	7.4	10.9	4.2	100
1964 ---	54.9	15.2	7.7	7.8	10.8	3.6	100

1/ Sources, Basic data from U.S. Bureau of Mines Mineral Yearbooks, by years, as follows:
1940, Minerals Yearbook 1941, pp. 831, 832; 1941, M.Y. 1942, pp. 858, 859; 1942, M.Y. 1943, pp. 870, 871; 1943, M.Y. 1944, pp. 855, 856; 1944, M.Y. 1945, pp. 862, 863; 1945, M.Y. 1946, pp. 296, 297; 1946 M.Y. 1947, pp. 281, 282; 1947, M.Y. 1948, pp. 299, 300; 1948, M.Y. 1949, pp. 293, 294; 1949, M.Y. 1950, pp. 278-280; 1950, M.Y. 1951, pp. 318, 319; 1951, M.Y. 1951, pp. 320, 321; 1952, M.Y. Vol. II, pp. 58, 59; 1953, M.Y. Vol. II, pp. 47, 48; 1954, M.Y. Vol. II, p. 44; 1955, M.Y. Vol. II, pp. 43, 44; 1956, M.Y. Vol. II, pp. 46, 47; 1957, M.Y. Vol. II, pp. 61, 62; 1958, M.Y. Vol. II, pp. 63, 64; 1959, M.Y. Vol. II, pp. 59, 60; 1960, M.Y. Vol. II, pp. 64, 65; 1961, M.Y. Vol. II, pp. 73, 74; 1962, M.Y. Vol. II, pp. 68, 69; 1963, M.Y. Vol. II, pp. 71, 72; 1964, M.Y. Vol. II.

TABLE 6. NUMBER OF BITUMINOUS COAL MINES, BY SIZE OF ANNUAL OUTPUT IN THE UNITED STATES, 1940-1964 1/

(Data plotted on Chart 6.)

Year	CLASS 1 500,000 tons and over	CLASS 2 200,000 to 500,000 tons	CLASS 3 100,000 to 200,000 tons	CLASS 4 50,000 to 100,000 tons	CLASS 5 10,000 to 50,000 tons	CLASS 6 Less than 10,000 tons	TOTAL
1940 ---	247	389	432	371	1,157	3,728	6,324
1941 ---	276	454	437	402	1,305	3,948	6,822
1942 ---	316	495	484	445	1,492	3,740	6,972
1943 ---	318	537	464	481	1,544	3,276	6,620
1944 ---	310	518	559	540	1,776	3,225	6,928
1945 ---	277	476	591	629	1,920	3,140	7,033
1946 ---	249	457	560	637	2,016	3,414	7,333
1947 ---	303	498	618	704	2,665	3,912	8,700
1948 ---	265	490	580	768	2,697	4,279	9,079
1949 ---	164	383	497	666	2,148	4,701	8,559
1950 ---	218	456	514	622	2,367	5,252	9,429
1951 ---	264	434	464	604	2,046	4,197	8,009
1952 ---	231	386	425	532	1,820	3,881	7,275

1953 ---	226	398	358	484	1,629	3,576	6,671
1954 ---	190	300	290	410	1,612	3,328	6,130
1955 ---	227	320	331	471	1,908	4,599	7,856
1956 ---	246	323	365	488	2,112	4,986	8,520
1957 ---	245	303	311	466	2,393	4,821	8,539
1958 ---	200	265	295	408	2,169	4,927	8,264
1959 ---	212	248	261	383	1,948	4,667	7,719
1960 ---	202	258	262	396	2,102	4,645	7,865
1961 ---	195	225	242	420	2,183	4,383	7,648
1962 ---	204	240	255	414	2,201	4,426	7,740
1963 ---	224	242	262	499	2,250	4,463	7,940
1964 ---	238	220	270	553	2,299	4,050	7,630

1/ Sources, U.S. Bureau of Mines Mineral Yearbooks, by years, as follows: 1940, Minerals Yearbook 1941, pp. 831, 832; 1941, M.Y. 1942, pp. 858, 859; 1942, M.Y. 1943, pp. 870, 871; 1943, M.Y. 1944, pp. 855, 856; 1944, M.Y. 1945, pp. 862, 863; 1945, M.Y. 1946, pp. 296, 297; 1946, M.Y. 1947, pp. 281, 282; 1947, M.Y. 1948, pp. 299, 300; 1948, M.Y. 1949, pp. 293, 294; 1949, M.Y. 1950, pp. 278-280; 1950, M.Y. 1951, pp. 318, 319; 1951, M.Y. 1951, pp. 320, 321; 1952, M.Y. Vol. II, pp. 58, 59; 1953, M.Y. Vol.II, pp. 47, 48; 1954, M.Y. Vol. II, p. 44; 1955, M.Y. Vol. II, pp. 43, 44; 1956, M.Y. Vol. II, pp. 46, 47; 1957, M.Y. Vol. II, pp. 61, 62; 1958 M.Y. Vol. II, pp. 63, 64; 1959, M.Y. Vol. II, pp. 59, 60; 1960, M.Y. Vol. II, pp. 64, 65; 1961, M.Y. Vol. II, pp. 73, 74; 1962 M.Y. Vol. II, pp. 68, 69; 1963, M.Y. Vol. II, pp. 71, 72; 1964, M.Y. Vol. II.

TABLE 7. NUMBER OF BITUMINOUS COAL MINES, BY SIZE OF ANNUAL OUTPUT, IN TENNESSEE, 1940-1964 1/

(Data plotted on Chart 7.)

Year	CLASS 1 500,000 tons and over	CLASS 2 200,000 to 500,000 tons	CLASS 3 100,000 to 200,000 tons	CLASS 4 50,000 to 100,000 tons	CLASS 5 10,000 to 50,000 tons	CLASS 6 Less than 10,000 tons	TOTAL
1940 ---	---	10	10	12	21	71	124
1941 ---	---	12	12	13	25	84	146
1942 ---	1	12	13	14	31	103	174
1943 ---	1	13	10	17	29	110	180
1944 ---	---	12	12	12	46	69	151
1945 ---	---	9	10	21	39	61	140
1946 ---	---	8	11	15	30	49	113
1947 ---	---	8	19	7	34	63	131
1948 ---	---	9	16	13	30	88	156
1949 ---	---	2	11	19	21	103	156
1950 ---	---	4	15	16	30	68	133
1951 ---	---	3	11	18	43	181	256
1952 ---	---	4	10	14	52	279	359

1953	---	---	6	7	8	55	453	529
1954	---	---	---	---	---	---	---	361
1955	---	---	5	9	14	90	386	504
1956	---	1	7	9	21	107	388	533
1957	---	---	7	11	14	83	376	491
1958	---	---	5	2	20	97	376	500
1959	---	---	5	2	12	103	358	480
1960	---	---	4	5	10	99	297	415
1961	---	---	2	6	13	104	266	391
1962	---	1	1	12	13	84	242	353
1963	---	1	4	7	12	82	160	266
1964	---	1	3	7	16	82	144	253

1/ Sources, U.S. Bureau of Mines Mineral Yearbooks, by years, as follows: 1940, Minerals Yearbook 1941, pp. 831, 832; 1941, M.Y. 1942, pp. 858, 859; 1942, M.Y. 1943, pp. 870, 871; 1943, M.Y. 1944, pp. 855, 856; 1944, M.Y. 1945, pp. 862, 863; 1945, M.Y. 1946, pp. 296, 297; 1946, M.Y. 1947, pp. 281, 282; 1947, M.Y. 1948, pp. 299, 300; 1948, M.Y. 1949, pp. 293, 294; 1949, M.Y. 1950, pp. 278-280; 1950, M.Y. 1951, pp. 318, 319; 1951, M.Y. 1951, pp. 320, 321; 1952, M.Y. Vol. II, pp. 58, 59; 1953, M.Y. Vol. II, pp. 47, 48; 1954, M.Y. Vol. II, p. 42; 1955, M.Y. Vol. II, pp. 43, 44; 1956, M.Y. Vol. II, pp. 46, 47; 1957, M.Y. Vol. II, pp. 61, 62; 1958, M.Y. Vol. II, pp. 63, 64; 1959, M.Y. Vol. II, pp. 59, 60; 1960, M.Y. Vol. II, pp. 64, 65; 1961, M.Y. Vol. II, pp. 73, 74; 1962, M.Y. Vol. II, pp. 68, 69; 1963, M.Y. Vol II, pp. 71, 72; 1964, M.Y. Vol. II.

Exhibit D-395 (Continued)

TABLE B. SALIENT STATISTICS ON BITUMINOUS COAL IN THE UNITED STATES, 1940-1964 y

Year	Production (net tons)	Average value per ton f.o.b. mines	Number of mines	Average number of men working daily	Average tons per man per day	Average number of days worked	Percentage of underground production--	
							Cut by machine	Mechanically loaded
1940	460,771,500	$1.91	6,324	439,075	5.19	202	88.4	35.4
1941	514,149,245	2.19	6,822	456,981	5.20	216	89.0	40.7
1942	582,692,937	2.36	6,972	461,991	5.12	246	89.7	45.2
1943	590,177,069	2.69	6,620	416,007	5.38	264	90.3	48.9
1944	619,576,240	2.92	6,928	393,347	5.67	278	90.5	52.9
1945	577,617,327	3.06	7,033	383,100	5.78	261	90.8	56.1
1946	533,922,068	3.44	7,333	396,434	6.30	214	90.8	58.4
1947	630,623,722	4.16	8,700	419,182	6.42	234	90.0	60.7
1948	599,518,229	4.99	9,079	441,631	6.26	217	90.7	64.3
1949	437,868,036	4.88	8,559	433,698	6.43	157	91.4	67.0
1950	516,311,053	4.84	9,429	415,582	6.77	183	91.8	69.4
1951	533,664,732	4.92	8,009	372,897	7.04	203	93.4	73.1
1952	466,840,782	4.90	7,275	335,217	7.47	186	92.8	75.6
1953	457,290,449	4.92	6,671	293,106	8.17	191	92.3	79.6
1954	391,706,300	4.52	6,130	227,397	9.47	182	88.8	84.0
1955	464,633,408	4.50	7,856	225,093	9.84	210	88.1	84.6
1956	500,874,077	4.82	8,520	228,163	10.28	214	84.6	84.0
1957	492,703,916	5.08	8,539	228,635	10.59	203	80.9	84.8
1958	410,445,547	4.86	8,264	197,402	11.33	184	75.3	84.9
1959	412,027,502	4.77	7,719	179,636	12.22	188	72.1	86.0
1960	415,512,347	4.69	7,865	169,400	12.83	191	67.8	86.3
1961	402,976,802	4.58	7,648	150,474	13.87	193	64.7	86.3
1962	422,149,325	4.48	7,740	143,822	14.72	199	63.3	85.7
1963	458,928,175	4.39	7,940	141,646	15.83	205	61.0	85.8
1964	486,997,952	4.45	7,630	128,698	16.84	225	57.4	87.4

y Source: U.S. Bureau of Mines 1964 "Minerals Yearbook," Volume II.

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(Continued)

TABLE B. SALIENT STATISTICS ON BITUMINOUS COAL IN THE UNITED STATES, 1940-1964 y

ction tons)	Average value per ton f.o.b. mines	Number of mines	Average number of men working daily	Average tons per man per day	Average number of days worked	Percentage of underground production--		Percentage of total production--	
						Cut by machine	Mechanically loaded	Mechanically cleaned	Mined by stripping
1,500	$1.91	6,324	439,075	5.19	202	88.4	35.4	22.2	9.2
9,245	2.19	6,822	456,981	5.20	216	89.0	40.7	22.9	10.7
2,937	2.36	6,972	461,991	5.12	246	89.7	45.2	24.4	11.5
7,069	2.69	6,620	416,007	5.38	264	90.3	48.9	24.7	13.5
6,240	2.92	6,928	393,347	5.67	278	90.5	52.9	25.6	16.3
7,327	3.06	7,033	383,100	5.78	261	90.8	56.1	25.6	19.0
2,068	3.44	7,333	396,434	6.30	214	90.8	58.4	26.0	21.1
3,722	4.16	8,700	419,182	6.42	234	90.0	60.7	27.7	22.1
8,229	4.99	9,079	441,631	6.26	217	90.7	64.3	30.2	23.3
8,036	4.88	8,559	433,698	6.43	157	91.4	67.0	35.1	24.2
1,053	4.84	9,429	415,582	6.77	183	91.8	69.4	38.5	23.9
4,732	4.92	8,009	372,897	7.04	203	93.4	73.1	45.0	22.0
0,782	4.90	7,275	335,217	7.47	186	92.8	75.6	48.7	23.3
0,449	4.92	6,671	293,106	8.17	191	92.3	79.6	52.9	23.1
6,300	4.52	6,130	227,397	9.47	182	88.8	84.0	59.4	25.1
3,408	4.50	7,856	225,093	9.84	210	88.1	84.6	58.7	24.8
4,077	4.82	8,520	228,163	10.28	214	84.6	84.0	58.4	25.4
3,916	5.08	8,539	228,635	10.59	203	80.9	84.8	61.7	25.2
5,547	4.86	8,264	197,402	11.33	184	75.3	84.9	63.1	28.3
7,502	4.77	7,719	179,636	12.22	188	72.1	86.0	65.5	29.4
2,347	4.69	7,865	169,400	12.83	191	67.8	86.3	65.7	29.5
6,802	4.58	7,648	150,474	13.87	193	64.7	86.3	65.7	30.3
9,325	4.48	7,740	143,822	14.72	199	63.3	85.7	64.3	30.9
8,175	4.39	7,940	141,646	15.83	205	61.0	85.8	63.1	31.4
7,952	4.45	7,630	128,698	16.84	225	57.4	87.4	63.7	31.2

of Mines 1964 "Minerals Yearbook," Volume II.